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MONTANA LEGISLATIVE HISTORY

Chapter 28 Session L 2001
Bill House 246 Senate _____

History and final status sheet x
Introduced bill x
Fiscal note n/a
Third reading bill x
Final version of bill x

House Committee on Agriculture

Hearing date(s)* 1/16
1/25

Executive action (vote) date(s)* 1/25

Comm. Report 1/26

Floor 2nd reading & vote 1/29

Floor 3rd reading & vote 1/30

Senate Committee on Agriculture, livestock

Hearing date(s)* 2/7
2/9

Executive action (vote) date(s)* 2/12

Comm. Report 2/12

Floor 2nd reading & vote 2/14

Floor 3rd reading & vote 2/15

Conference or Free Conference Comm. _____ Yes x No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes x No

Committee _____ Report _____

NOTES:



Compiled by: SJL

Date: 5/24/2016

1/23 Fiscal Note Printed
2/23 Missed Deadline for General Bill Transmittal

HB 246 Introduced by Bales, et al.

LC0999 Drafter: Lee Evans

Clarify Liability for Damages to Property Caused by Livestock on Highways

1/10	Introduced		
1/10	Referred to Agriculture		
1/16	Hearing		
1/25	Committee Executive Action--Bill Passed as Amended	18	1
1/26	Committee Report--Bill Passed as Amended		
1/29	2nd Reading Passed	92	8
1/30	3rd Reading Passed	93	6
	Transmitted to Senate		
1/31	Referred to Agriculture, Livestock and Irrigation		
2/07	Hearing		
2/12	Committee Executive Action--Bill Concurred	9	2
2/12	Committee Report--Bill Concurred		
2/14	2nd Reading Concurred	44	6
2/15	3rd Reading Concurred	43	6
	Returned to House		
2/16	Sent to Enrolling		
2/16	Returned from Enrolling		
2/16	Signed by Speaker		
2/20	Signed by President		
2/20	Transmitted to Governor		
3/01	Signed by Governor		
3/01	Chapter Number Assigned		
	Chapter Number 28		
	Effective Date: 3/01/2001 - All Sections		

HB 247 Introduced by Lewis, et al.

LC0582 Drafter: C. Erickson

Phase-in Reduction of Fees in Lieu of Tax for Heavy Trucks

11/20	Fiscal Note Needed		
1/11	Introduced		
1/11	Referred to Taxation		
1/11	Fiscal Note Requested		
1/16	Hearing		
1/22	Fiscal Note Received		
1/24	Fiscal Note Printed		
1/26	Revised Fiscal Note Received		
1/26	Fiscal Note Printed		
2/13	Committee Executive Action--Bill Passed	19	1
2/13	Committee Report--Bill Passed		
2/15	2nd Reading Passed	83	17
2/16	3rd Reading Passed	88	12
	Transmitted to Senate		
2/21	Referred to Taxation		
3/14	Hearing		
3/14	Committee Executive Action--Bill Concurred	8	0
3/14	Committee Report--Bill Concurred		
3/17	2nd Reading Concurred	41	4
3/17	Segregated from Committee of the Whole Report	44	0
3/17	Taken from 2nd Reading; Rereferred to Finance	44	0
3/27	Hearing		
4/04	Committee Executive Action--Bill Concurred	13	8

Buttler

INTRODUCED BY *Ruth B. ...* BILL NO. *246*
 (Primary Sponsor) *Ruth B. ...*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PERSON OWNING, CONTROLLING, OR
Barrett *Clark* *Donald R. Dublin* *Gene Olson*
David H. ... *Walt ...*

IN POSSESSION OF LIVESTOCK OR A PERSON WHO OWNS PROPERTY IN AN OPEN RANGE OR A HERD
 DISTRICT DOES NOT HAVE A DUTY TO PREVENT LIVESTOCK FROM WANDERING ON HIGHWAYS IN
 OPEN RANGE OR IN A HERD DISTRICT; PROVIDING THAT A PERSON OWNING, CONTROLLING, OR IN
 POSSESSION OF LIVESTOCK OR A PERSON OWNING PROPERTY IN AN OPEN RANGE OR HERD
 DISTRICT IS NOT LIABLE FOR DAMAGES OR INJURY CAUSED BY AN ACCIDENT INVOLVING A MOTOR
 VEHICLE AND LIVESTOCK; AMENDING SECTION 81-4-203, MCA; AND PROVIDING AN IMMEDIATE
 EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Bill ... *R.D. ...* *Allen ...* *Diane ...*
... *...* *...* *...*

**NEW SECTION. Section 1. No duty of livestock owner or property owner to prevent livestock
 from wandering on highways -- open range.** (1) Except as provided in Title 60, chapter 7, part 2, for the
 highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock in an open
 range or a person owning property in an open range:

(a) does not have the duty to keep livestock off any highway, as defined in 60-1-103(19), that
 traverses, is located on, or is adjacent to the open range; and

(b) is not liable for damages to any property or for injury to a person caused by an accident
 involving a motor vehicle and livestock that occurs on a highway, as defined in 60-1-103(19), that
 traverses, is located on, or is adjacent to open range.

(2) As used in this section, "person" means an individual, partnership, corporation, limited liability
 company, or association.

**NEW SECTION. Section 2. No duty of livestock owner or property owner to prevent livestock
 from wandering on highways -- herd district.** (1) Except as provided in Title 60, chapter 7, part 2, for the
 highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person
 owning property in a herd district:

1 (a) does not have the duty to keep livestock off any highway, as defined in 60-1-103(19), that
2 traverses, is located on, or is adjacent to a herd district; and

3 (b) is not liable for damages to any property or for injury to a person caused by an accident
4 involving a motor vehicle and livestock that occurs on a highway, as defined in 60-1-103(19), that
5 traverses, is located on, or is adjacent to a herd district.

6 (2) As used in this section, "person" means an individual, partnership, corporation, limited liability
7 company, or association.

8

9 **NEW SECTION. Section 3. Limits on liability of livestock owner or property owner in open range**
10 **or herd district.** (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in
11 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property has no
12 duty to keep livestock from wandering on highways, as defined in 60-1-103(19), and is not liable for
13 damages to any property or for injury to a person caused by an accident involving a motor vehicle and
14 livestock as provided in 60-7-203 and [sections 1 and 2].

15 (2) As used in this section, "person" means an individual, partnership, corporation, limited liability
16 company, or association.

17

18 **Section 4.** Section 81-4-203, MCA, is amended to read:

19 **"81-4-203. Open range defined.** In 81-4-204, 81-4-207, ~~and~~ 81-4-208, and [section 1], the term
20 "open range" means all lands in the state of Montana that are not enclosed by a fence of ~~not less than~~ at
21 least two wires in good repair. The term "open range" includes all highways outside of private enclosures
22 and used by the public whether or not the ~~same~~ highways have been formally dedicated to the public."

23

24 **NEW SECTION. Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as
25 an integral part of Title 81, chapter 4, part 2, and the provisions of Title 81, chapter 4, part 2, apply to
26 [section 1].

27 (2) [Section 2] is intended to be codified as an integral part of Title 81, chapter 4, part 3, and the
28 provisions of Title 81, chapter 4, part 3, apply to [section 2].

29 (3) [Section 3] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the
30 provisions of Title 27, chapter 1, part 7, apply to [section 3].

1
2 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

3
4 NEW SECTION. **Section 7. Applicability.** [This act] applies to accidents involving livestock and
5 motor vehicles on or after [the effective date of this act].

6 - END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON AGRICULTURE

Call to Order: By CHAIRMAN DONALD L. HEDGES, on January 16, 2001
at 3:32 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Donald L. Hedges, Chairman (R)
Rep. Linda Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Norma Bixby (D)
Rep. Gilda Clancy (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Christopher Harris (D)
Rep. Verdell Jackson (R)
Rep. Jim Keane (D)
Rep. Larry Lehman (R)
Rep. Holly Raser (D)
Rep. Clarice Schrupf (R)
Rep. Frank Smith (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Rick Dale (R)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Robyn Lund, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 246, 1/16/2001

HEARING ON HB 246

Sponsor: REPRESENTATIVE KEITH BALES

Proponents: John Bloomquist, Montana Stock Growers Association,
Vern Peterson, Counties of Montana
Bill Garrison, Montana Stock Growers Association
Tom Holland, Insurance agent
Bill Tash, SD 17
Brian Severin, MSGA
John Swanz, MSGA
John Musgrove, HD 91
Andy Zook, Rancher
Steve Barnard, Mt. Association of State Grazing
Districts
Leon LaSalle, Rancher
John Novotny
David Smith
Johnny Schultz
Jed Eugene
Nancy Schultz, Montana Cattle Women
Mike Meuli
Jim Higgenbarth
Sandy Woldstad
Allan Evans, Fergus Electric Coop.
Tucker Hughes
Liz Jones, Rancher
Lorna Karn, Montana Farm Bureau Federation
Myrlin Schatz
Patsy Glazer
Randy Smith
Phil Hill, Commissioner of Garfield County

Opponents: David Slovak, Attorney
Mary Murphy
Ron Dorvall
Wendy Lee
Kristi Blazer, Attorney
Al Smith, Montana Trial Lawyers
Roy Andes, Attorney

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 2.3}

REPRESENTATIVE KEITH BALES, HD 1, stated that the reason for addressing HB 246 is the recent Montana supreme court decision which reversed some long standing precedence of the open range law and the relationship that it has between a livestock owner and motor vehicles on our roads and highways. The central question of it is: Does the livestock owner owe duty to the motorist in open range conditions and on our roads? There has been court precedence for many years that has been built upon that the livestock owner did not have a duty or liability to the motorist within the state or open range areas. The supreme court overruled that, and in essence stated that the open range law as written did not apply to the relationship between the livestock owner and a motorist, it only applied between the relationship between the livestock owner and land owner/livestock owner. In cases up until that point the supreme court had said that the open range law did apply. Previously the supreme court and the legislature had addressed the issue of the relationship between livestock owner and motorist in Title 60. The result of that was that they said on interstates and primary highways the livestock owner did owe some duty to the motorist. This was, however, overturned in the Steiner decision. The Supreme Court also overruled the Williams case, in which it was stated that the livestock owner did not have a duty to motorists in a herd district. In order to correct these things HB 246 was drafted. The first two sections of this bill say that in areas of open range and with in a herd district the livestock owner does not have a duty to the motorist, excluding those highways which the legislature has addressed. Section three addresses the liability issues. ~~Section four is further definition. Section five is the codification instructions. Section six provides for an immediate effective date.~~ This supreme court decision has caused much turmoil and concern.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 10.5}

John Bloomquist, Attorney, Stock Grower's Association, also representing: Montana Wool Growers, Montanan Water Resources Association, Montana Dairymen's Association, and Montana Chamber of Commerce. He submitted written testimony dealing with the history of previous law and information on the Steiner case and the Williams case. EXHIBIT(agh12a01) He stated that the effect of HB 246 is to take the law to where it was before the Steiner decision. He stated that except as to those interstate highways

and state primary highways, where the legislature in Title 60 has established an obligation to keep livestock off the rights of way, prior to Steiner, on all the other roads there was no duty and no liability. He submitted a map that indicates where these roadways are. **EXHIBIT(agh12a02)** This is what sections one and two of this bill are about. This bill is to re-establish the areas long thought to be where liability could occur and where it could not occur.

Vern Peterson, Fergus County Commissioner, Montana Association of Counties, stated that the losses of this bill would be far reaching and devastating to the livestock producers of Montana. It will also have negative impacts on local governments, and the traveling public. He points out that most county roads exist on easements, not owned by the public. The landowner owns the property that the road is on. If this bill does not pass all of these roads will have to be fenced, but he questions who would have to do that. In Fergus county there are 1800 miles of county road, estimates half is not fenced. With 900 miles of unfenced road to be fenced, that is 1800 miles of fence, \$10,000 per mile for a four wire, steel post, labor-included fence. This would be about \$18 million for Fergus county. He feels that this will lead to pressure to abandon roadways, this is where the public will lose. He urges a unanimous do pass.

{Tape : 1; Side : A; Approx. Time Counter : 23.2}

Bill Garrison, Montana Stock Growers, thinks that this Steiner decision, if it stays, will have a very adverse effect on the livestock industry in Montana through court costs, insurance costs and the ability to manage property cost effectively. There are hundreds of miles of county roads, many are in open range, if ~~these roads have to be fence it would cost a great deal of money.~~ If they are fenced it would have an adverse effect on how people can manage their range land, as far as livestock getting to water and things of that nature. He has two county roads going through his land; one has two water gaps in it. That is the only water that his livestock have and they have to cross the road to get to it. He also brought up the issue of forest service roads, two of which are on his property. He fears liability on these roads. There is currently an attorney general's decision on access to streams in Montana that addresses bridges on county roads, if it stays as is, that could be real meaningful for people to control their livestock to keep them off of the public access roads. He recommends passage of HB 246.

Tom Holland, Western States Insurance, submitted written testimony. **EXHIBIT(agh12a03)**

Senator Bill Tash, SD 17, stated that his family has been livestock producers for 110 years. This law does overturn 100 years of precedent and it is a concern that does need legislative remedy such as HB 246. Urges support of the bill from the committee.

Brian Severin, Montana Stock Growers, operates two ranches. One ranch is in an open range district, one pasture has a public road going about four miles through his property to get to forest service land. All the grass is on one side of the road and all of the water is on the other. If he fences this road he can't operate because it would split the grass and the water with no way for livestock to get from one to the other. He would have to petition to close the road; the public would lose access to the forest service land. Second ranch is in a herd district, with two county roads passing through. Every pasture borders one of those two roads. He has no trouble there, except during hunting season. Hunters often leave the gate open or run through the fence, damaging it. This allows livestock on the road with out his knowledge. If he was sued, Mr. Severin believes he would win, but is concerned about the court costs that he may not be able to afford.

John Swaz, rancher, stated that he has about 15 miles of county roads that run through his ranches. In the past he has allowed all sportsmen access to his ranch at any time. With this ruling he would not be able to do so because of the possibility of sportsmen leaving gates open, leading to cattle getting to the road. He would have to consider closing his ranch to recreationists. He urges passage of HB 246.

~~-----~~ **Representative John Musgrove, HD 91**, conveyed Hill County Commissioners' and Blaine County Commissioners' support of HB 246. He asks for a do pass.

Andy Zook, rancher, agrees with concerns brought forward by previous proponents and would like to add the concern of leasing grass from other landowners. He wonders if he will be liable for the landowner's negligence if his cattle get through a hole in the fence. He urges committee support.

Steve Barnard, Montana Association of State Grazing Districts, states that there are 26 grazing districts representing hundreds of thousands of acres of mixed ownership land. Many of the roads on these lands are not fenced. As a result of the supreme court ruling, the liability to the districts becomes a major burden which was not there before.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Leon LaSelle, rancher, testified in favor of HB 246. He would like to add that from the environmental stand point, fences would create real disaster areas as far as no water, et cetera. It would cut off some of the key areas and that will add a lot of expense. Under use of areas can be particularly devastating as far as wildfires and the like. Another issue is that if the right of way does get fenced, who will maintain it. Right now the cattle are doing a real nice job of keeping the vegetation under control.

John Novotny, rancher, wanted to address the state's livestock, particularly the elk. Elk can cause continuous damage to fences. The state claims ownership of all the wildlife, is the state liable when the cattle are on the roads due to wildlife damage to the fences? In his experience, ranchers in a populated area are diligent about fence maintenance, but still run into the previous problems mentioned by other witnesses. If this doesn't pass it will be one more step to take out the agricultural community.

David Smith, shared that he has open range in several counties containing 25 miles of county road. He urges the committee to pass this bill unanimously.

Johnny Schultz, Montana Association of State Grazing Districts, submitted written testimony in support of this bill.

EXHIBIT(agh12a04)

Jed Eugene, rancher, feels that ranchers and farmers are honest quiet people that tend to keep to themselves. This, however, is a time when he feels it is necessary to stand up. There are many ~~county roads on his property that he will be forced to petition~~ for closure of these roads. He fears that this will, in return, give the quiet rancher and farmer a black eye with the public and the sportsmen.

{Tape : 1; Side : B; Approx. Time Counter : 6.2}

Nancy Schultz, Montana Cattle Women, submitted a letter from Carol Mosher, Chairman of MCW, **EXHIBIT(agh12a05)** and written testimony of her own. **EXHIBIT(agh12a06)**

Mike Meuli, rancher, stated that he runs on open range which has a lot of county roads and highways on it. In a one month period of time during the summer there were 14 holes cut into the fence by recreationists. For reasons like this he would have to close his ranch to the public and he fears that recreation would be very detrimentally effected if this bill does not pass.

Jim Hagenbarth, stated that as a private property owner he has an obligation to the public to allow them access to his ground. The supreme court ruling will make this more difficult. He also stated, in reference to fences being cut, et cetera, that his bulls fall in love too, and they will just run through the fence. He urges support from the committee on HB 246.

Sandy Woldstad, Harlowton Chamber of Commerce, brought up the negative effect on tourism if this bill does not pass. The two hotels in the town depend on the hunters. If there is no where to hunt there is no reason for them to come to her county.

Allan Evans, Fergus Electric Cooperative, stated that he was here representing 3355 members of the board in 14 counties. One of his concerns was for the natural resource policy of Montana and his feeling that this policy is off track. Economy problems, electric energy problems, and so on, can be tied back to problems in our natural resource arena. The Montana supreme court's action on this decision is an example of the assault on property rights, commodity interests, and agriculture in our state. He stated that those who he represents resent the attack on those in rural Montana. We need to re-entitle natural resource interests and begin to organize efforts to correct the policy problem. This bill would be a step in the right direction.

Tucker Hughes, rancher, is here to represent his family. He has a county road that passes through his ranch, with land deeded on both sides of the road. He is concerned that by not fencing he may not only be liable, but also negligent. He wonders if everything will have to be fenced immediately, and, if so, how is he going to manage his resources.

~~**Liz Jones, Rafter Ranch**~~, mentioned that she has had a call from her forest service ranger asking her to take a look at what will happen to her permits with this decision. There are roads that run through her forest service permit acreage that would require many miles of fences that would be detrimental to the recreationists, the wildlife and the ranch. She believes that it is another tool that the forest service will try to use to limit grazing permits. She urges the passage of HB 246.

Lorna Karn, Montana Farm Bureau Federation, urges for a do pass recommendation.

Myrlin Schatz, rancher, travels the state roads and says that the counties can't even afford to do their roads and have had to give them all back to the state. The railroad that runs through their property gave them the lumber and wire to put the fence up, and

he wonders if the state is going to do it for him if it has to be fenced.

Patsy Glaser hopes that the committee will pass the bill.

Randy Smith stated that one of his biggest concerns was the wildlife. Hunters have been known to wipe out hundreds of feet of fence all at once. He urges a do pass because it will be a great financial burden to the stock growers of Montana if this bill fails.

Phil Hill, Commissioner of Garfield County, recommends a do pass for this bill.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 19.2}

David Slovak, attorney, represented Mary Murphy, plaintiff in the Steiner case, before the supreme court. He stated that the supreme court went to great lengths in their decision. He told the story of Mary Murphy and her 1993 accident where she hit a 2000 pound bull in an accident that was ruled unavoidable. This occurred just outside of Billings in a heavily traveled area and was life threatening for her. Mary survived, but her face had to be totally reconstructed. Slovak stated that what is important about the supreme court action is that the court put back in place the law that was the common law in Montana for the last 150 years, Section 27-1-701 of the Montana Code Annotate. That provision provides that everyone in the state must act in a reasonable fashion based on the circumstances. What does that mean in a car and livestock collision, he asked. First you have to look at the circumstances, i.e. population, traffic, livestock owner's previous behavior. Each case needs to be considered as unique on its facts, and you need to consider whether or not the livestock owner's conduct was reasonable under the circumstances. Overall, livestock owners do a good job of fencing, both to protect the public and to protect the livestock. The vehicle/livestock collision issue is not a huge problem. HB 246 is so broad and so absolute in protecting the individuals that don't deserve protection, that it is at the expense of faultless victims. There needs to be a balance struck. HB 246 currently sends the wrong message by encouraging the livestock industry not to take stringent measures to fence. He reminds us that no cases have been tried under this law, and it would be before a jury of peers that would decide the fault. The motoring public and the livestock owners need to live together and something is needed to find the right balance, however, HB 246 is too strict.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Mary Murphy, stated that she was involved in the livestock accident that was referenced by Mr. Slovak and wanted to share how that accident had changed her life. Although she has no recall of the accident, she was told that she hit a bull on the road. The bull came through the windshield and shattered her face. She woke up in the hospital, her face was completely swollen, she had a trach to help her breathe, she couldn't see. She said that her face felt like a bowl of Jello that was still setting and slopping back and forth. After weeks in the hospital followed by other surgeries, she still has a permanent scar on the retina, trouble hearing, and no sense of taste or smell. These are things that she will have to learn to live with.

Ron Dorvall, stated that he is opposed to this bill because it is too broad sweeping and let's irresponsible people off the hook. He told of his 18 year old daughter who was killed right outside of Dillon city limits. A drunk driver had hit and killed a horse and left it in the highway. His daughter collided with this horse and was killed in the accident. The owner of the horse had been notified several times in a three week period just prior to the collision that his horse was out. He would knowingly let his horse run loose for 24 to 48 hours at a time. He thinks that the idea that the supreme court was trying to address is the difference between responsible and irresponsible livestock owners. He thinks that this decision hasn't been tested in court, and he fears that this bill is too broad sweeping. He emphasized that the supreme court, he believes, was targeting the irresponsible livestock owner and that HB 246 would let them off the hook.

~~Wendy Lee~~, stated that she also was injured in a livestock collision. She referred to a fine line of responsibility of a livestock owner, and she also fears that HB 246 would let irresponsible people off of the hook. She closed by saying that a few sour grapes can ruin the whole bunch.

Kristi Blazer, attorney, said that she was representing a client involved on a cow collision that occurred half a mile outside of Helena. Her client suffered \$130,000 in medical damages. In order to try the case she has to prove negligence on the part of the livestock owner, for example, he left the gate open. All that the Steiner case does is create potential liability for livestock owners. It allows the jury to decide who is being the more reasonable person under the circumstances. As far as sweeping away a hundred years of precedence, she stated that this was incorrect. The turning point was the Bartsch case in 1967, only 33 years ago. The Steiner case put the law back to pre-

Bartsch. In closing she said that everyone needs to be responsible and that's all that the Steiner case hopes. We need to trust a jury.

Al Smith, Montana Trial Lawyers Association, started by handing out a letter from a trial lawyer, who is also a rancher.

EXHIBIT(agh12a07) The second document he passed out was a brochure titled Traffic Safety Problem Identification giving some statistics for different types of accidents. **EXHIBIT(agh12a08)** He also passed out copies of the statutes that go around this piece of legislation. **EXHIBIT(agh12a09)EXHIBIT(agh12a10)** He stated that the Mt. Trial Lawyers represent people who have been injured. The reason that they are here today is to try to represent the people who will be injured in a livestock collision. MTLA supports the idea that persons, businesses and government entities should be responsible and accountable for their actions or omissions. The problem with HB 246 is that it absolves livestock owners from all responsibility and accountability for their actions or omissions, and it protects both the responsible and the irresponsible livestock owners. The supreme court decision does not say that all livestock owners are now liable; it says that there has to be a balancing act of the rights and responsibilities of both the motorist and the livestock owner. We need to keep in mind that it will be a jury of peers who will decide if it was the motorist or the livestock owner who was negligent. He cites that Article 2 Section 16 of the constitution provides for courts to be open to every person and a speedy remedy for every injury of person, property or character. This includes the motorist, but HB 246 denies this to the motoring public. He asked if there was another way to provide the balance where livestock owners need some certainty ~~that they won't be sued for everything that happens, but that the~~ people who are injured have some options too. He said that HB 246 provides absolute immunity to livestock owners, but what is needed is a balance in the relationship of a motorist and a livestock owner.

{Tape : 2; Side : A; Approx. Time Counter : 24.5}

Roy Andes, attorney, asked for a copy of the Montana Law Review book be placed in the record, in which an article that he wrote dealing with open range issues in contained. **EXHIBIT(agh12a11)** He wanted to add a couple of points in reference to the open range laws. He stated that open range did begin as a custom, not a law. He said that the Steiner case both overturned precedent, and it also didn't overturn precedent. There was 35 years of precedent with the Bartsch decision, saying that there was immunity for rancher from injuries resulting from livestock. On

the other hand, prior to 1967, there were 15 decisions of the Montana supreme court that did a balancing test between the right of ranchers and the rights of other individuals. He also offered some observations of the bill. He felt that section three of the bill did everything that needed to be done, section one and two are redundant. Although others have said that HB 246 will return us to before the Steiner decision, that is not quite correct because the bill doesn't define the word livestock. He said that he found eight different places in the Montana Code where the word livestock was defined in different ways. This leaves room for interpretation that was not there before Steiner.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 33}

REPRESENTATIVE GILDA CLANCY asked how one would address the cost of putting in fencing for the people in this industry. **Al Smith** said that the Montana supreme court opinion does not say that livestock owners have to put in any new fencing. The only time that they would have to put in fencing would be, if under the circumstances, it was reasonable to do so.

REPRESENTATIVE DAVE GALLIK asked that within a herd district it appears that there is absolute immunity for owners of ground and livestock, is that correct. **Rep. Bales** replied that that was correct. **REP. GALLIK** then asked, if you look at the Montana Code Annotate relating to herd districts, it appears that when someone's livestock gets loose within the herd district, the person responsible is subject to criminal charges and civil liability; why is there a double standard? **Rep. Bales** replied that the reason that is included is that they were trying to take this back as closely as possible to the history of what the cases that the legislature had acted on previous to the Steiner decision, for example the Bartsch and Williams cases. **REP. GALLIK** then asked the sponsor if he would agree that if this bill becomes law, we are going to have a situation where there could be liability in the herd district for any damage other than damage to an automobile. **Rep. Bales** said that he believed that the herd district laws were made to address problems between livestock owners. The main controlling factor on liability between livestock owners and motorists were the decisions of the Montana supreme court.

{Tape : 2; Side : B; Approx. Time Counter : 18.6}

REPRESENTATIVE HOLLY RASER asked about the herd district and open range differences and, before the Steiner decision, why were other roads considered to be open range even within a herd

district. **Roy Andes** said that it was his recollection that it was the Williams case that dealt with the herd district issue, and that in this case the court made very little distinction between the herd district liability and the other open range liability.

REPRESENTATIVE CHRISTOPHER HARRIS, asked if it would be possible for the state of Montana to buy insurance to cover all of the different liabilities and how much it would cost. **Mr. Holland** replied that the cost would depend on the size of the operation, each ranch would be on its own merits. He estimated that it would cost \$2500 to \$3,000 per year. **REP. HARRIS** asked if that was per ranch. **Mr. Holland** replied that that was per ranch for these types of liability claims. **REP. HARRIS** asked how many ranches there might be within the open range districts.

Mr. Holland said that the last he saw there were 23,425 ranches in Montana that are capable of running cattle, probably half are in open range.

REPRESENTATIVE VERDELL JACKSON asked for clarification of the rule of law for the Steiner case. **Mr. Slovak** replied that he thought that what Judge Nelson, in the Steiner case, said was that they were going to apply the same standard that they apply when someone sues a store owner, other motorist, et cetera. It was meant to be a simple straight forward standard that Montana has followed since about 1850, that is reasonable conduct under the circumstances. **REP. JACKSON** said that he was thinking that the standard was what a reasonably prudent person would do under the circumstances, and he thought that it was always there, you can't sign it away; it is his assumption that this law can not prevent someone being responsible for negligence. **Mr. Slovak** said that he was aware of other legislation where one segment of

society was given greater protection as opposed to other members of society, for example, the skier safety responsibility act.

REP. JACKSON then asked why not raise the bar from negligence.

Mr. Slovak said that based on this rule you would have the same analysis to determine whether or not there was a viable claim. The plaintiff must show negligence. He said that there are two different definitions of open range within the Montana Code Annotate, one talks about all areas of the state, including highways; one is under the livestock containment rules that says that open range is those areas of the state where agriculture or livestock is a predominant factor in the local economy, and livestock generally roam unrestrained.

REPRESENTATIVE LINDA HOLDEN asked, in reference to Exhibit 8, how many more collisions with domestic animals there are in 1998 than in 1989. **Al Smith** replied that it was 23. **REP. HOLDEN** then asked for the number of collisions with wild animals in 1998

compared with in 1989. **Mr. Smith** replied 967 more. **REP. HOLDEN** then asked what protection do the Montana citizens have in a collision with wild animals and, considering that wild animals don't recognize the open range or herd districts, what recourse do citizens have if they strike a wild animal, for example a deer. **Mr. Smith** replied that wild animals are different because they are not owned or controlled by anybody. There is no protection, per se, that the state of Montana would not be liable for deer jumping out on the road. The other big difference is that hitting a deer that might weigh 200 pounds, compared to hitting a 2000 pound steer, would lead to a much less severe accident.

REPRESENTATIVE BUTCH WADDILL asked, in the Steiner case, was that on open range. **Mr. Slovak** replied that it happened in a herd district right outside of Billings. The district court judge determined that it was not open range because it was heavily fenced, then during the trial the judge decided that she could not make that determination herself and was going to submit it to the jury. **REP. WADDILL** then asked, looking at HB 246, it just pertains to open range and herd districts, so any time that was not the case and a bull got onto the road this bill would not apply, is that **Mr. Slovak's** interpretation. **Mr. Slovak** replied that that was one construction, but if you use the other definition of open range that is referenced in the bill, it talks about open range as including everything, including highways and roads, so that would lead to the entire state of Montana as being open range.

REPRESENTATIVE JIM KEANE asked if **Mr. Bloomquist** saw any way to alleviate the problem of the irresponsible rancher. **Mr. Bloomquist** said that different standards could be established, ~~for example, willfulness or gross negligence. You could raise~~ the bar from standard of ordinary negligence, which is a question of fact that would probably go to a jury, to willfulness or gross negligence. He thinks that there are other statutes that would deal with instances of someone intentionally causing harm with livestock, for example endangerment statutes. HB 246 talks about prior to Steiner and the status of the law, on certain roadways you could be negligent and liable; on other roadways, according to the case law and the body of law that existed prior to Steiner, there was no duty and no liability.

REPRESENTATIVE GILDA CLANCY said that she was concerned about the cost of fencing. She asked if it could be required for land owners to fence open range land to avoid liability. **Rep. Bales** said that he didn't think that it would be a matter of forcing them. To avoid the possibility of higher insurance rates, conflicts and suits, to avoid the unknown, it may be more

advantageous to try to fence it. The other thing that he can see is that many of the county roads are on easements, the land owner owns the land on which the county road is located, he is not certain how that would turn out as far as fencing. He said that it is not a requirement to fence, but that it would certainly be one of the reactions.

REPRESENTATIVE HOLLY RASER asked if the sponsor would consider redefining the herd district portion of the bill because she was concerned that the urban interface could be termed open range and that is probably where the problems will be occurring. **Rep. Bales** replied that he thinks the supreme court has totally opened the door and what he is trying to do is to close this gaping door before a whole lot wanders through. However, he doesn't think that that would preclude the legislature from looking at additional legislation to look at different situations. He said that in the essence of time and the criticalness of this decision on how livestock operators will work, that we need to pass HB 246 to take us back to where we were and then address other issues in subsequent legislation. **REP. RASER** then said that it seemed as if it were two open doors, the open range door and the urban interface door. **Rep. Bales** replied that it is not, because the supreme court decisions up to this point had said that, even where there were herd districts, the roadways were considered open range. He doesn't think that this bill is the place to address those concerns.

REPRESENTATIVE KARL WAITSCHIES asked if Rep. Bales could explain how you get a herd law and what the purpose is. **Rep. Bales** replied that the landowners in an area have to petition 55 percent of the people in the area to establish a herd law. In a herd district situation you have to fence livestock in.

~~-----~~ **REP. WAITSCHIES** asked if it had anything to do with urban versus rural. **Rep. Bales** said no.

REP. RASER asked for some background into why the herd districts came after open range and why were they implemented. **Krista Lee Evans** stated that they were first enacted in 1917, and if the committee wanted the information she could research it further. **REPRESENTATIVE KATHLEEN GALVIN-HALCRO** asked the previous question of John Bloomquist. **Mr. Bloomquist** replied that open range was basically a modification of custom and tradition. The open range doctrine established fence livestock out if you want prevent accidental trespass. Open range deals with the land owner to land owner relationship. Herd districts are a legislative reaction that modified that doctrine. Essentially the legislature said that when a certain percentage of land owners in an area petition, and the county commissioners adopt a herd district and mark the boundaries, within that area you have to

fence your livestock in; it is no longer your neighbors' responsibility to fence them out.

REP. RASER asked the same question of Mr. Andes. **Mr. Andes** agreed with what Mr. Bloomquist had said. He added that 1917 was the era of farmer/rancher conflict was growing. The farmers wanted to get rid of livestock who happened to be grazing their crops.

REP. WAITSCHIES asked for a definition of adequately fenced. **Mr. Slovak** replied that in some situations no fence at all would be required. It is a jury question, a factual question based on what is reasonable under the circumstances. No one is suggesting, and the Steiner decision does not say that all open range has to be fenced. He stated that it would be reasonable under the circumstances, which is the same standard that the legal system has used for the last 150 years in a variety of settings. **REP. HEDGES** commented that legal fences are defined in 81-4-101 MCA. **Mr. Slovak** said that the Steiner decision said that the legal fence will not be used for a negligence per se claim. He again referred to reasonable under the circumstances, which we must allow a jury to decide.

Closing by Sponsor:

REP. BALES said that, as he views this, the supreme court in their decision overturned considerable case history that said that there was no duty owed by the livestock operator, except when the legislature specified that there was a duty. The supreme court has opened it up and wiped away all legal history on this issue. He said that the legislature needs to do something, and do it soon, or we will be inundated with court cases to try to find out where we are at legally. The only way that negligence can be decided is by a trial by jury, and even though it may be a favorable jury, there are going to be several cases appealed to the supreme court. After the Steiner decision we are left with a vague, undeterminable situation on the relationship. There is no court history or legislative history. HB 246 will put back into effect what the court history was, 100 percent. He urges the committee to pass this bill.

ADJOURNMENT

Adjournment: 6:13 P.M.

REP. DONALD L. HEDGES, Chairman

ROBYN LUND, Secretary

DH/RL

EXHIBIT (agh12aad)

Memorandum

To: House Agriculture Committee

From: John E. Bloomquist, Montana Stockgrowers Assoc.

Re: H.B. 246 (Rep. Bales)

Date: January 16, 2001

I. Introduction

H.B. 246 (Rep. Bales) is supported by the Montana Stockgrowers Assoc. (MSGA) as a result of the Montana Supreme Court's December 2000 decision in the case entitled Mary Larson-Murphy v. Steiner et al., Cause No. 98-441, December 14, 2000 (Steiner). In Steiner, the Montana Supreme Court overruled a substantial body of the Court's precedence regarding the relationship of livestock owners and landowners to motorists in Montana. As a result of the Steiner decision, livestock owners and landowners may be subject to liability to a motorist involved in an accident on all public roadways in Montana, whereas before Steiner, potential liability was more limited. This Memorandum supplies information to the Committee on the status of the law before Steiner, the effect of the Steiner decision and the effect of H.B. 246.

II. Discussion

A. Pre-Steiner:

Prior to the Steiner decision, the potential liability for a livestock owner to a motorist was limited. The limitation of liability generally depended on the type of roadway where an accident occurred.

For highways designated by the legislature under Title 60, Chapter 7, Parts 1 and 2, a livestock owner may be liable for damages in an accident involving livestock on a highway or right-of-way as designated by the legislature. These areas are generally areas associated with interstate highways or state "primary" highways as determined by the Highway Commission. On these highways, a livestock owner could be potentially liable, although there was no presumption of liability, in accidents involving livestock and motorists. See, Ambrogini v. Todd, 197 Mont. 111, 642 P. 2d 1013 (1982); Yager v. Deane, 258 Mont. 453, 853 P. 2d 1214 (1993).

For all other highways, the Court had generally held that under Montana's "open-range" doctrine, a livestock owner was not liable to a motorist for an accident involving livestock. This was the rule established in Bartsch v. Irvine, 149 Mont. 405, 427 P. 2d 302 (1967). The Bartsch rationale was used by the Court in several cases which followed the Bartsch decision. See, Jenkins v. Valley Garden Ranch, 151 Mont. 463 (1968); Sanders v. Mount Haggin Livestock Co., 160 Mont. 73 (1972); Siegfried v. Atchison, 219 Mont. 14 (1985); State ex rel. Martin v.

Finley, 227 Mont. 242 (1987); Williams v. Selstad, 235 Mont. 137 (1988); and Indendi v. Workman, 272 Mont. 64 (1995).

As such, prior to Steiner, the potential liability of a livestock owner, and any duty to keep livestock off a roadway or right-of-way depended upon whether the roadway was an interstate highway, state primary highway, or some other type of public roadway.

B. The Steiner Decision:

In Steiner, the Montana Supreme Court overruled Bartsch and its successor cases which applied the "open range", no duty rule to the livestock owner/motor vehicle user relationship on Montana highways. The Court also overruled the Williams decision which applied the no duty rule to roadways within a herd district.

The Steiner Court did not overrule the Todd or Yager decisions regarding the potential liability of a livestock owner on the legislatively designated highways. As such, as to these roadways, the statutory provisions of Title 60 would still apply.

Under Steiner, the Court applied a general negligence standard of care on livestock owners in accidents involving livestock and a motorist. In Steiner, the Court also extended potential liability to a landowner who may lease property to a tenant who may graze livestock on the property.

C. Effect of Steiner:

After Steiner, a livestock owner or landowner, is potentially liable for an accident involving livestock and a motorist on all Montana highways. The previous distinction between designated highways (i.e., interstates and state primary highways) and other highways, seems to be removed under the Steiner decision. As such, a livestock owner whose livestock is involved in an accident on secondary state highways, county roads or other public roads may be potentially liable. The standard applied would be governed under general negligence.

Steiner made no distinction between fenced or unfenced highways, open range or herd district areas, and no distinction on the designation or type of highway where an accident may occur. As such, all public roadways in Montana where an accident could occur involving livestock are now sources of potential liability for a livestock owner or landowner.

D. H.B. 246:

H.B. 246 attempts to restore the status of the legal relationship between a livestock owner or landowner, and a motorist on Montana's highways, as it existed prior to the Steiner decision.

Under H.B. 246, for those highways other than Title 60 highways (i.e., interstates and state primary highways), the livestock owner or landowner would not be liable for damages to

persons or property in an accident involving livestock. For those highways designated under Title 60, the livestock owner could still be potentially liable. These legal relationships would apply to areas of open range, as well as herd districts.

In effect, H.B. 246 would statutorily recognize the effect of the Bartsch decision and the line of cases which followed, and recognize that on certain highways a livestock owner or landowner would not be liable, but on other highways (i.e., interstates or primary highways), a livestock owner could be potentially liable.

H.B. 246 would reestablish the balance recognized by the legislature in the passage of the Title 60 provisions which designated the highways where a livestock owner could be liable, while also recognizing previous judicial precedence which understood that many Montana highways pass through areas of where liability on a livestock owner or landowner would be inappropriate.

III. Conclusion

H.B. 246 would statutorily return Montana to the status of the law involving motorists and livestock prior to the Steiner Court decision. Without such a change, livestock owners and landowners throughout Montana would face potential liability in any accident which may involve a motorist and livestock. This potential liability may drastically change the management decisions on ranges traditionally used by livestock, access to vast areas of the State where roadways used by the public now exist, and significantly affect this State's livestock industry. MSGA urges your support for H.B. 246.

The following exhibit is a
map. Which exceeds
scan-able dimensions.

Exhibit: 2[#]
1.16.01
HB: 246

The complete exhibit is located with the
minutes at

Montana Historical Society Archives

**225 N. Roberts
Helena, MT 5960-1201
(406) 444-4775**

JANUARY 16, 2001

HOUSE AGRICULTURE COMMITTEE
HOUSE OF REPRESENTATIVES

I AM HERE TO SUPPORT HB246, THIS BILL IS ATTEMPTING TO FIX A TERRIBLE WRONG DOING. IT WAS THE TYPE OF MONTANA SUPREME COURT DECISION THAT TURNED OVER A LAW THAT HAS BEEN ON THE BOOKS FOREVER. IF IT AIN'T BROKE, DON'T FIX IT! THE TOTAL RAMIFICATIONS WILL BE FINANCIALLY DISASTROUS FOR ALL LIVESTOCK PRODUCERS IN MONTANA.

THE CATTLE/ LIVESTOCK OWNER COULD BE HELD LIABLE FOR DAMAGES TO VEHICLES AND BODILY INJURY DAMAGES TO PASSENGERS IN A VEHICLE, REGARDLESS OF SIZE, SHAPE OR KIND THAT COME IN CONTACT WITH LIVESTOCK ON ANY PUBLIC ROAD IN MONTANA. WE HAVE HAD OPEN RANGE LAWS ENFORCING THESE PROBLEMS AND CLAIMS FOR YEARS.

OUR MONTANA LIVESTOCK PRODUCERS WHO LEASE LAND FORM THE U.S. FOREST SERVICE, B.L.M. AND STATE OF MONTANA ARE NOW LIABLE. I CAN NOT SEE THESE ENTITIES PROVIDING ADEQUATE FENCING TO KEEP THESE ANIMALS OFF ROADWAYS. WE EVEN HAVE PRIVATE LAND OWNERS WHO HAVE GRACIOUSLY ALLOWED AND GIVEN PUBLIC ACCESS ACROSS THEIR OWN DEEDED LAND SO THE PUBLIC CAN ACCESS PUBLIC LANDS FOR HUNTING, FISHING, HIKING AND BACK PACKING. NOW WITH THIS SUPREME COURT RULING THEY ARE LIABLE FOR THE VEHICLES TRAVELING ON THESE ROADS. THE PUBLIC MIGHT GET STOPPED FROM THIS ACTIVITY DUE TO THE EXPOSURE THE LIVESTOCK PRODUCERS NOW HAVE.

THIS RULING COULD ALSO CAUSE A HUGE INCREASE IN ALL LIABILITY POLICIES. SOME INSURANCE COMPANIES ARE GUESSING A TRIPLE OF THERE RATES, AND OTHERS MAY EVEN WITHDRAW FROM WRITING FARM AND RANCH INSURANCE IN THE STATE OF MONTANA. DON'T LET A "KNEE-JERK" DECISION ON ONE ISOLATED CASE OF NEGLIGENCE RUIN THE LIVES OF MANY, MANY LIVESTOCK PRODUCERS.

DID YOU KNOW THE LIVESTOCK OWNER MIGHT BE HELD LIABLE FOR LIVESTOCK DAMAGES CAUSED TO A VEHICLE, WHEN THE LIVESTOCK WONDERED ONTO THE ROADWAY. ONLY AFTER THE FENCE WAS DAMAGED FROM A CAR THAT HAD RAN INTO THE FENCE AND LEFT. THE OLD HIT AND RUN DEAL. THE LIVESTOCK PRODUCER MIGHT NOT HAVE EVEN KNOW ABOUT THE ACCIDENT OR WRECK THAT OCCURRED ON HIS FENCE SAY AT 2:00 AM IN THE MORNING, OR THE CATTLE THAT GOT OUT AND HIT AT 4:00 AM, THAT ISN'T MONTANA RIGHT!

THESE TYPE OF CLAIMS ARE NOT AN EVERYDAY OCCURRENCE IN MONTANA. I INSURE CLOSE TO 450 RANCHES AND WE HAVE HAD 3 DEATH OF LIVESTOCK CLAIMS IN THE PAST 12 MONTHS. WE HAVE TO REMEMBER CATTLE IN MONTANA OUT NUMBER THE PEOPLE WHO LIVE HERE AND CAUSE WAY LESS PROBLEMS ON THE HIGHWAYS THEN SOME OF OUR DRIVERS.

AGAIN, IF IT AIN'T BROKE, THE MONTANA SUPREME COURT HAD NO BUSINESS TRYING TO FIX IT!

SINCERLY



TOM HOLLAND
WESTERN STATES INSURANCE
116 SOUTH WASHINGTON
DILLON, MT 59725
PH: 406-683-6881

EXHIBIT 3
DATE 01/16/01
HB 246

Mr. Chairman Don Hedges/ Linda Holden,
House Ag Committee members, other interested parties:

My name is John Schultz. I represent Montana Association of State Grazing Districts also my family livestock ranching business. *600 Permitted*
In support of H.B. 246, introduced by Rep. Bales

The decision repealing the Open Range Law recently handed down, is going to have a severe economic impact to the domestic livestock industry.

For example: If fencing is expected, funding was neglected to be provided in the ruling. An enormous amount of money is needed just for fencing materials. The county where I reside has approximately 1800 miles of county maintained road. At a minimum cost of \$1200 for materials per mile a huge economic burden is suddenly placed on property owners.

Management of Resource:

Water and feed facilities quite often are across the road from one another. Fencing across migratory routes of antelope will be influenced.

Is it unreasonable to submit a request for the same criteria of expectations that are automatically extended to wildlife also be extended on an equal basis to that of domestic livestock owners?

There are many more insurance claims involving wildlife collisions than with domestic livestock. County, state, federal and private property owners do not need this burden of liability pertaining to the Open Range issue.

Thank you. I will try to answer any questions.

John S. Schultz
Grass Range, MT 59032
406-428-2101

**TEE BAR RANCH CO.**

Quarter Horses Performance Replacement Cattle

AUGUSTA, MONTANA 59410

PHONE 406-562-3315

January 14, 2001

To: Representative ^{DON} ~~Jim~~ Hedges, Chairman
Montana House Agriculture Committee
State Capitol, Helena, Montana
406-444-1865

Mr. Chairman and Committee,

I would like to present testimony in support of HB 246, the Open Range Bill.

Our ranch has many miles of fences bordering county and state highways. Some of these fences are 20 to 30 miles from our ranch buildings. We have a good community record of keeping our fences in repair and we immediately get animals back in our pastures whenever they get out. Even with our diligence, let me give you some examples of what has happened to us through the years. Some of these problems have happened in the middle of the night.

1. Flash floods can wash out fences.
2. A vehicle can run off the road and through a fence and knock it down.
3. High winds can knock over long distances of crossh fences.
4. Wild game can knock down fences.
5. Animals can get to fighting and knock out fences.
6. Wolves, coyotes, etc. will chase our animals through fences.
7. Hunters and fisherman will leave gates open, knock down fences and cut wires. We even have had recreationists take our crotch fence posts to build their campfires.
8. A neighbors dry weeds from their CRP field can build up along fence lines and then the fence falls down.
9. We have had terrible forest and range fires that can take out many miles of fence.

We desperately need the protection of HB 246 and ask that you vote in support of this bill. Common sense should be evident that it is not humanly possible to avoid all instances in controlling the action of so many different circumstances.

Thank you for your careful consideration of HB 246.

Respectfully,

Carol Mosher

Carol Mosher
Tee Bar Ranch Co.
Box 389
Augusta, Montana 59410
406-562-3315

EXHIBIT 10
DATE 01/16/01
HB 246

Mr. Chairman Don Hedges/ Linda Holden,
House Ag Committee members, other interested parties:

My name is Nancy Schultz. I represent Montana CattleWomen also our
family livestock ranching business.

In support of H.B. 246, introduced by Rep. Bales

Montana family ranching has been under attack for some time...this is just
one more expense we would have to bear when we don't get the cost of
production from the market place now.

Thank you.

Nancy Schultz
Grass Range, MT 59032
406-428-2101

Civil Commitment/Release

(This is one sample case offered on this topic in Mental & Physical Disability Law Reporter. June/00)

Voluntary Patient; Involuntary Commitment, Medication Order

The Massachusetts supreme court found that because a woman hospitalized as a conditional voluntary patient had not given notice of her intention to leave the hospital, the substantial likelihood of harm necessary to enter involuntary commitment and medication orders was not present. *Acting Superintendent of Bournemouth Hosp. v. Baker*, 725 N.E.2d 552 (Mass. Sup. Jud. Ct. 2000).

Lynda Baker was committed to Bournemouth Hospital pursuant to Mass. Gen. L. ch. 123, §§§§7 and 8, and her treatment with antipsychotic medications ordered pursuant to Mass. Gen. L. ch. 123, §§8B. Baker moved to dismiss. She argued that the hospital's acting superintendent lacked the authority to petition for Baker's involuntary commitment and medication. She also argued that the district court lacked jurisdiction to hear the petitions, as Baker was a "conditional voluntary" patient and had not given notice of her intention to leave the hospital pursuant to Mass. Gen. L. ch. 123, §§11. The district court denied the motion.

The state high court reversed. Though Baker has been released, the parties requested that the issues presented be decided. Issues involving the treatment and commitment of persons with mental illness are generally considered matters of public importance. *See Guardianship of Weedon*, 565 N.E.2d 432 (Mass. Sup. Jud. Ct. 1991), 15 MPDLR 258. Here, because appellate review is likely to occur after the expiration of an order of commitment, the court exercised its discretion to decide the issue. *See Guardianship of Doe*, 463 N.E.2d 339 (Mass. Sup. Jud. Ct. 1984).

Section 7(a) of Mass. Gen. L. ch. 123 authorizes a hospital superintendent to petition the district court for commitment of any patient if a failure to hospitalize would create a likelihood of serious harm due to mental illness. Section 8(a) prohibits the court from entering or renewing such an order unless discharge from the hospital would create a likelihood of serious harm. Section 11 addresses the status of conditional voluntary patients, requiring those patients to give three days written notice of their intention to leave. They may be held beyond the three-day notice period if, prior to its expiration, the superintendent files a petition for commitment. Sections 7(a), 8(a), and 11 must be read together when reviewing an order for commitment of a conditional voluntary patient. *See Telesetsky v. Wight*, 482 N.E.2d 818 (Mass. Sup. Jud. Ct. 1985).

An element of proof in such cases is the imminence of discharge from the facility. Since a conditional voluntary patient is not free to leave the hospital without first giving notice, he or she is not at risk of imminent danger absent such notice, and there can be no substantial likelihood of harm. The acting superintendent's claim that the statute gives him the authority to seek commitment of any patient at any time, without having to prove the likelihood of serious harm on "discharge," would render that term in the statute superfluous, a disfavored result. *See Bynes v. School Comm. of Boston*,

581 N.E.2d 1019 (Mass. Sup. Jud. Ct. 1991). Further, this reading would allow him to file a petition simply by presupposing a patient's discharge, eliminating any requirement of an actual controversy. See *Caputo v. Board of Appeals*, 111 N.E.2d 674 (Mass. Sup. Jud. Ct. 1953).

Further, the order for Baker's treatment with antipsychotic medications is invalid because it is predicated on an invalid commitment. The superintendent is authorized to file a petition for such treatment under Mass. Gen. L. ch. 123, §§8B(a). However, §§8B(b) expressly requires that such a petition will not be heard unless the court has first issued an order of commitment. Because the acting superintendent took no action to terminate Baker's status as a conditional voluntary patient, he was bound to work within the framework of rights afforded a patient of that status. The proper avenue to seek a medication order for a conditional voluntary patient is through a proceeding in the Probate and Family Court Department. See *Rogers v. Commissioner of Dep't of Mental Health*, 458 N.E.2d 308 (Mass. Sup. Jud. Ct. 1983), 8 MPDLR 103.

EXHIBIT 7

DATE 01/16/01

HB 246

BAXTER CREEK FARMS

MICHAEL D. & KATHLEEN R. COX

P. O. BOX 1105

BOZEMAN, MT 59711-1105

406-587-4445

January 16, 2001

Representative Don Hedges, Chairman
House Agricultural Committee

Re: *House Bill No. 246*

Dear Representative Hedges:

Our family has been involved in agriculture for five generations just south of Manhattan. We raise hay, grain and purebred Angus cattle. I am also a lawyer who represents people who are injured through the fault of others.

I write to express our opposition to House Bill No. 246, as that Bill is written. As a rancher, I understand that cattle will escape their confinement and get onto the road. If the rancher uses reasonable care to prevent his cattle from straying onto the road (he has reasonably decent fences) he should not be responsible for the collision, and is not now as I understand the recent Supreme Court decision. However, this Bill as written, would eliminate all accountability and responsibility for ranchers. It would reward the poor ranching practices of a small minority of ranchers who do not attend to their fences, doing what they reasonably should to protect the citizens who use our highways from serious injury.

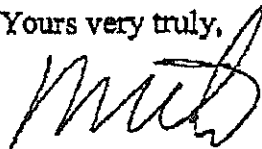
Everyone knows that a collision with an animal at highway speeds often results in serious, long term debilitating injuries and can result in death. It seems unfair to place the responsibility for this tragedy solely on the occupants of a vehicle who are totally innocent for the collision. Providing absolute immunity to ranchers, particularly in herd districts, will create more danger.

Representative Don Hedges, Chairman
House Agricultural Committee
January 16, 2001
Page 2

As ranchers, our farm liability policies cover the situation where our negligence allows the animal to be on the road. If ranchers have used ordinary care to prevent this, there is no liability at all. This Bill would transfer all responsibility to the automobile driver and would likely result in an increase in automobile insurance rates, without a corresponding decrease in farm liability rates. If the motorist or the passenger of the motorist does not have health insurance or adequate car insurance, and the injury is debilitating, the taxpayers will end up paying for it through state and federal assistance programs. And, although this is an acceptable result when the collision with the animal occurs without the fault of the rancher, it seems unacceptable when ranchers pay no attention to their fences and their cattle are habitually and routinely loose on highly trafficked roadways.

Thank you for your consideration.

Yours very truly,



Michael D. Cok

mikcok@cokwheatlaw.com
dml

EXHIBIT 8
DATE 01/16/01
HB 246

Traffic Safety Problem Identification

FY 2000

July 9, 1999

**Traffic Safety Bureau
Transportation Planning Division
Montana Department of Transportation
2701 Prospect Avenue
Helena, Montana 59620-1001
<http://www.mdt.state.mt.us>**

11. Animal Collisions or Avoidance

During the last 10 to 15 years, animal crashes and/or avoidance has steadily increased. Some of this increase is due to higher census numbers of deer and other wild animals.

Table 38 Collisions Involving Animals			
Year	Collisions With Wild Animals	Collisions With Domestic Animals	Fatal Crashes Involving Animals
1989	608	236	0
1990	713	226	2
1991	746	225	3
1992	851	208	3
1993	868	212	3
1994	1203	269	1
1995	1305	287	6
1996	1363	248	1
1997	1501	239	3
1998	1575	259	2
Chg 1 Year	+4.9%	+8.4%	-33.3%
Chg 5 Year	+26.2%	+3.2%	-28.6%

Source: TIS - Montana Department of Transportation

During a twelve-year period, motor vehicles have collided increasingly with wild animals. The number of these events has increased from 589 to 1575. The lack of a numerical daytime speed limit may have had some effect on this increase.

12. Railroad Crossing Safety

Motor vehicle collisions with trains are a rare event, but the severity of such collisions tends to be very high. Table 39 presents a history of these collisions on public roadways in Montana for rural and all crashes.

Table 39 Collisions with Trains						
Year	Rural			Total		
	Crashes	Fatal Crashes	Injury Crashes	Crashes	Fatal Crashes	Injury Crashes
1989	14	0	5	25	1	10
1990	13	4	3	20	5	5
1991	14	0	4	20	0	4
1992	11	1	6	16	1	7
1993	13	5	5	21	6	9
1994	18	0	8	23	0	10
1995	11	2	4	16	3	5
1996	24	3	10	27	3	11
1997	20	0	11	28	0	16
1998	16	2	6	24	2	11
Chg 1 Yr	-20.0%	—	-45.5%	-14.3%	—	-31.3%
Chg 5 Yr	-7.0%	—	-21.1%	+4.3%	-16.7%	+7.8%

Source: TIS – Montana Department of Transportation

One of the fatal crashes last year involved a school bus. This collision resulted in two fatalities, and it was fortunate that the bus was not filled. Crashes were down slightly from the two previous years.

8. Collisions with Bicycles

Bicycle crashes with motor vehicles, as a percentage of total motor vehicle crashes, reached a low in 1996. Over the last five years there was an average of 1.4 fatal crashes, while the five years between 1988 and 1992 resulted in an average of 3.2 fatal crashes.

Table 33
Motor Vehicle Collisions with Bicyclists

Year	Crashes	Percent of All Crashes	Fatalities	Percent of all Fatalities	Injuries
1989	164	0.93%	2	1.23%	162
1990	169	1.03%	4	2.11%	164
1991	146	0.86%	1	0.50%	151
1992	180	1.04%	5	2.94%	180
1993	149	0.79%	1	0.60%	155
1994	208	1.07%	2	1.10%	203
1995	197	0.96%	1	0.47%	203
1996	180	0.74%	2	1.13%	158
1997	224	0.99%	1	0.38%	202
1998	198	0.90%	1	0.42%	183
Chg 1 Year	-11.6%	-9.1%	—	+10.5%	-9.4%
Chg 5 Year	+3.3%	-1.1%	-28.6%	-42.9%	-0.7%

Source: TIS – Montana Department of Transportation

60-6-105. Removal at owner's expense when not denied. If an encroachment affixed to the land is not denied and is not removed within 5 days after receipt of the notice, the department may remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(2).

Cross-References

Civil procedure — costs, Title 25, ch. 10.

EXHIBIT 9

DATE 01/16/01

CHAPTER 7 HB 2410

LIVESTOCK ON HIGHWAYS

Part 1 — Fencing of Open Range

60-7-101. Purpose.

60-7-102. Definitions.

60-7-103. Department to fence right-of-way through open range.

Part 2 — Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful.

60-7-202. Exclusions.

60-7-203. Penalty.

60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways.

60-7-205. Violations.

Chapter Cross-References

Containment of livestock, Title 81, ch. 4.

Part 1

Fencing of Open Range

Part Cross-References

Open range defined, 81-4-203.

60-7-101. Purpose. It is the purpose of 60-7-101 through 60-7-103 to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

History: En. 32-2425.1 by Sec. 1, Ch. 255, L. 1974; R.C.M. 1947, 32-2425.1.

60-7-102. Definitions. As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

(1) A "high-hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(2) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

(3) A "low-hazard area" is a segment of the primary highway system passing through open range which is not a high-hazard area.

(4) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

History: En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; R.C.M. 1947, 32-2426(2).

60-7-103. Department to fence right-of-way through open range.

(1) The department shall fence the right-of-way of any part of the state highway system that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) The department shall erect a fence in every high-hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal-aid highway safety programs. Gates, stock underpasses, water facilities, and cattle guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

History: (1) En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; Sec. 32-2426, R.C.M. 1947; (2) En. 32-2429 by Sec. 5, Ch. 255, L. 1974; Sec. 32-2429, R.C.M. 1947; R.C.M. 1947, 32-2426(1), 32-2429.

Cross-References

Right-of-way defined, 60-1-103.

Legal fence defined, 81-4-101.

Construction of auto pass not to deprive legal fence of character, 81-4-102.

Part 2

Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful. A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of:

(1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the transportation commission and the secretary of transportation as a part of the national system of interstate and defense highways; or

(2) a state highway designated by agreement between the transportation commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60-7-202.

History: En. Sec. 1, Ch. 95, L. 1951; amd. Sec. 1, Ch. 186, L. 1961; Sec. 32-1018, R.C.M. 1947; amd. and redes. 32-21-176 by Sec. 7, Ch. 316, L. 1974; R.C.M. 1947, 32-21-176; amd. Sec. 6, Ch. 75, L. 1993.

Cross-References

Federal-aid highway systems defined, 60-1-103.

60-7-202. Exclusions. Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system which the department of transportation designates as being impracticable to exclude livestock. These portions of the highway shall be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

History: En. Sec. 2, Ch. 95, L. 1951; amd. Sec. 2, Ch. 186, L. 1961; Sec. 32-1019, R.C.M. 1947; amd. and redes. 32-21-177 by Sec. 8, Ch. 316, L. 1974; R.C.M. 1947, 32-21-177; amd. Sec. 24, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Traffic-control devices, Title 61, ch. 8, part

2.

60-7-203. Penalty. A person who violates 60-7-201 is guilty of a misdemeanor and is subject to a fine of not less than \$5 or more than \$100 for each offense. In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

History: En. Sec. 3, Ch. 95, L. 1951; amd. Sec. 3, Ch. 186, L. 1961; Sec. 32-1020, R.C.M. 1947; amd. and redes. 32-21-178 by Sec. 9, Ch. 316, L. 1974; R.C.M. 1947, 32-21-178.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways. A person who owns, controls, or possesses livestock may not herd or drive a herd of livestock numbering more than 10 on an interstate or state primary highway designated as such by the transportation commission unless the livestock is preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the flagmen escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967; Sec. 32-1021, R.C.M. 1947; amd. and redes. 32-21-179 by Sec. 10, Ch. 316, L. 1974; R.C.M. 1947, 32-21-179; amd. Sec. 6, Ch. 75, L. 1995.

Cross-References

Flag person defined, 61-1-411.

Flag vehicle defined, 61-1-412.

60-7-205. Violations. A person who violates 60-7-204 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967; Sec. 32-1022, R.C.M. 1947; amd. and redes. 32-21-180 by Sec. 11, Ch. 316, L. 1974; R.C.M. 1947, 32-21-180.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

When no penalty specified, 46-18-212.

60-1-103(9)

(19) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the highway.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

(23) "Right-of-way" is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(24) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.

(25) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

History: En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; R.C.M. 1947, 32-2203(part); amd. Sec. 2, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 75, L. 1995; amd. Sec. 1, Ch. 548, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 546 inserted definition of scenic-historic byway; and made

minor changes in style. Amendment effective July 1, 1999.

Cross-References

Powers and duties of Governor, 2-15-201.

60-1-104. Good Roads Day. The third Tuesday in June is hereby designated "Good Roads Day". The governor may annually by public proclamation request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4401.

Part 2

Classification of Highways

Part Cross-References

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

60-1-201. Classification — highways and roads. (1) Public highways of this state are classified as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

60-2-207. Agreements concerning analysis of effects of weight on highways. (1) The department may contract with the United States or any state or group of states or agencies thereof or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965; amd. Sec. 79, Ch. 316, L. 1974; R.C.M. 1947, 32-2411.

Cross-References

Motor vehicles — size — weight — load,
Title 61, ch. 10.

Coal area highway reconstruction
program, 90-6-210.

60-2-208. Seeding along highways. (1) After a federal-aid or state highway is constructed, the department shall seed barrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed must be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the natural resources conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence with a grass that may be cropped for hay and may lease the land or sell the right to take the hay to qualified persons.

History: En. Sec. 4-112, Ch. 197, L. 1965; amd. Sec. 6, Ch. 255, L. 1974; amd. Sec. 80, Ch. 316, L. 1974; R.C.M. 1947, 32-2412; amd. Sec. 243, Ch. 42, L. 1997.

Cross-References

Montana seed laboratory, 20-25-229.

Administration of certain islands and
abandoned riverbeds, 77-1-103.

Forest and conservation experiment
station, 20-25-241 through 20-25-245.

60-2-209. Description and plan of new highway or reconstructed or controlled-access facility. (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway or the commission designates a road, street, or highway as a controlled-access facility, the department shall make a description and plan showing the centerline and the established width, the immediate boundary lines of all private property over, across, or through which the highway passes, the name of the owner of the property, the boundaries of that part of the private ownership included within the right-of-way of the highway, the parcel number assigned to that part of each ownership included within the highway right-of-way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section or quarter section, tract, block, or lot from which the same has been subdivided is a valid

81-3-233. Penalty for removal of livestock from state without inspection — exception. Any person, other than the owner or his agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the same inspected where such inspection is required by law is guilty of a felony and shall be punished by a fine of not more than \$2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both such fine and imprisonment. The provisions of this section do not apply to any person who removes from this state any animal specified by this section for the purpose of obtaining emergency treatment for such animal by a licensed veterinarian.

History: En. Sec. 1, Ch. 173, L. 1961; amd. Sec. 28, Ch. 12, L. 1977; R.C.M. 1947, 46-808.

EXHIBIT

10

DATE

01/16/61

HB

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CHAPTER 4

CONTAINMENT OF LIVESTOCK

Part 1 — Fences

- 81-4-101. Legal fences defined.
- 81-4-102. Construction of auto pass not to deprive legal fence of character.
- 81-4-103. Civil liability.
- 81-4-104. Barbed wire fences to be kept in repair.
- 81-4-105. Fallen wire fencing declared nuisance — abatement.
- 81-4-106. Notice to owner to repair fence — duty of county commissioners.
- 81-4-107. Procedure when owner unknown or not resident of state — sale of wire removed.
- 81-4-108. Disposal of proceeds of sale of wire after payment of expense.

Part 2 — Animals Unlawfully Running at Large

- 81-4-201. Animals running at large.
- 81-4-202. Penalties.
- 81-4-203. Open range defined.
- 81-4-204. Male equine animals not to run on open range.
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- 81-4-206. Killing animal to prevent injury not prohibited.
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- 81-4-209. Penalty for violations.
- 81-4-210. Only purebred bulls to run at large — limitation on time.
- 81-4-211. Female breeding cattle, purebred bull to accompany.
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- 81-4-213. Penalty.
- 81-4-214. Branding animals running at large — running irons prohibited.
- 81-4-215. Liability of owners of stock for trespass.
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- 81-4-217. Retention of trespassing stock.
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- 81-4-301. Herd districts — creation, size, and location.
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- 81-4-303. Exclusion of government land.
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- 81-4-307. Trespassing animals in herd district — retention for damages and costs.
- 81-4-308. Retrieval of impounded animals a misdemeanor — penalty.
- 81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty.
- 81-4-310. Annexation into existing herd district.
- 81-4-311 through 81-4-320 reserved.
- 81-4-321. Definition.
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- 81-4-323. Petition to dissolve horse herd district — hearing and notice — order of county commissioners.
- 81-4-324. Horses running at large in herd district prohibited.
- 81-4-325. Penalty and liability for horses wrongfully entering on premises in horse herd district.
- 81-4-326. Retention and sale of horses for damages and care — procedure.
- 81-4-327. Sale of horses — disposition of proceeds.
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- 81-4-401. Certain livestock not to run at large in municipalities.
- 81-4-402. Punishment for permitting trespass of livestock.
- 81-4-403. Impounding animals — duties of cities and towns.
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- 81-4-409. Department to ascertain owner — notice.
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- 81-4-509. Proof of ownership — payment of taxes and penalties — decision of commissioners on claim.
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Part 6 — Estrays

- 81-4-601. Estray defined.
- 81-4-602. Estrays — department authorized to take possession.
- 81-4-603. Taking up and disposition of estrays — advertisement.
- 81-4-604. Sale at public auction — branding.
- 81-4-605. Expenses, how paid — disposition of proceeds of sale.
- 81-4-606. Publication of description of estrays sold — disposition of proceeds remaining in state treasury.
- 81-4-607 through 81-4-610. Repealed.
- 81-4-611 through 81-4-620 reserved.
- 81-4-621. Penalties.

Part 1

Fences

81-4-101. Legal fences defined. Any one of the following, if not less than 44 inches or more than 48 inches in height, shall be a legal fence in the state of Montana:

(1) all fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts. All corral fences which are used exclusively for the purposes of enclosing stacks which are situated outside of any lawful enclosure shall not be less than 16 feet from such stack so enclosed and shall be substantially built with posts not more than 8 feet distant from each other and not less than five strands of well-stretched barbed wire and shall not be less than 5 or more than 6 feet high. Any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

(2) all fences constructed of any standard woven wire not less than 28 inches in height, securely fastened to substantial posts not more than 30 feet apart, provided that two equidistant barbed wires shall be placed above the same at a height of not less than 48 inches from the ground;

(3) all other fences made of barbed wire, which shall be as strong and as well calculated to protect enclosures as those above described;

(4) all fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart, provided that, if leaning posts are used, there shall be a pole or wire fastened securely on the inside of the leg or support of such leaning post;

(5) all rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass.

History: En. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919; re-en. Sec. 3374, R.C.M. 1921; re-en. Sec. 3374, R.C.M. 1935; R.C.M. 1947, 46-1401.

Cross-References

Regulation of stable location, 7-21-4204.
Failure to close gates — criminal mischief,
46-6-101.

Mutual obligation of adjoining landowners,
70-16-205.
Fence-out requirement, 76-16-322.
Liability of stockowners for trespass,
81-4-215.

81-4-102. Construction of auto pass not to deprive legal fence of character. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

History: En. Sec. 3, Ch. 153, L. 1933; re-en. Sec. 4486.3, R.C.M. 1935; R.C.M. 1947, 16-1129.

81-4-103. Civil liability. Any person constructing or maintaining any fence of any kind not described in 81-4-101 is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3251, Pol. C. 1895; re-en. Sec. 2083, Rev. C. 1907; re-en. Sec. 3375, R.C.M. 1921; re-en. Sec. 3375, R.C.M. 1935; R.C.M. 1947, 46-1402.

81-4-104. Barbed wire fences to be kept in repair. The owners of barbed wire fences must keep the same in repair, and any person receiving notice in writing that his barbed wire fence or any part thereof is down or in such condition as to be likely to injure any livestock and fails or refuses to repair such fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals which may be injured by coming into contact with the fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3252, Pol. C. 1895; re-en. Sec. 2084, Rev. C. 1907; re-en. Sec. 3376, R.C.M. 1921; re-en. Sec. 3376, R.C.M. 1935; R.C.M. 1947, 46-1403.

81-4-105. Fallen wire fencing declared nuisance — abatement. All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock and a menace to any person riding or walking over the same is declared to be a public nuisance and subject to abatement in the manner hereinafter provided.

History: En. Sec. 1, Ch. 84, L. 1927; re-en. Sec. 3376.1, R.C.M. 1935; R.C.M. 1947, 46-1404.

Cross-References

Action to abate public nuisance, 45-8-112.

Public nuisances, Title 27, ch. 30, part 2.

81-4-106. Notice to owner to repair fence — duty of county commissioners. Upon ascertaining the existence in the county of any nuisance specified in 81-4-105, the board of county commissioners shall notify by registered or certified mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within 60 days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by 81-4-107.

History: En. Sec. 2, Ch. 84, L. 1927; re-en. Sec. 3376.2, R.C.M. 1935; R.C.M. 1947, 46-1405.

81-4-107. Procedure when owner unknown or not resident of state — sale of wire removed. If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.

History: En. Sec. 3, Ch. 84, L. 1927; re-en. Sec. 3376.3, R.C.M. 1935; amd. Sec. 50, Ch. 12, L. 1977; R.C.M. 1947, 46-1406.

Cross-References

Manner of sale of county property, Title 7, ch. 8, part 22.

81-4-108. Disposal of proceeds of sale of wire after payment of expense. The proceeds of such sale shall be used to defray the cost of collecting and selling said wire, and the balance, if any, shall be placed by the county

treasurer in a special fund and shall be held by him subject to claim by any person establishing to the satisfaction of the board of county commissioners that he was the lawful owner of said wire and entitled to the remaining proceeds of such sale. If no person claims said money within 1 year of the date of sale, the same shall be deposited in the general fund of the county.

History: En. Sec. 4, Ch. 84, L. 1927; re-en. Sec. 3376.4, R.C.M. 1935; R.C.M. 1947, 46-1407.

Part 2

Animals Unlawfully Running at Large

Part Cross-References

Grazing of livestock on highways, Title 60, ch. 7, part 2.

81-4-201. Animals running at large. It is unlawful for an owner or person in control of swine, sheep, llamas, alpacas, bison, ostriches, rheas, emus, or goats to willfully permit the animals to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393, R.C.M. 1921; re-en. Sec. 3393, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1945; R.C.M. 1947, 46-1704; amd. Sec. 10, Ch. 166, L. 1989; amd. Sec. 5, Ch. 417, L. 1993; amd. Sec. 9, Ch. 206, L. 1995.

81-4-202. Penalties. (1) Any person violating 81-4-201 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 and is liable for damages to any party injured by the violation, in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section, except those collected in a justice's court, must be paid into the county treasury for the use and benefit of the public schools.

History: (1) En. Sec. 1166, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907; re-en. Sec. 3394, R.C.M. 1921; re-en. Sec. 3394, R.C.M. 1935; Sec. 46-1705, R.C.M. 1947; (2) En. Sec. 1167, Pen. C. 1895; re-en. Sec. 8840, Rev. C. 1907; re-en. Sec. 3395, R.C.M. 1921; re-en. Sec. 3395, R.C.M. 1935; Sec. 46-1706, R.C.M. 1947; R.C.M. 1947, 46-1705, 46-1706; amd. Sec. 54, Ch. 557, L. 1987; amd. Sec. 1, Ch. 8, L. 1993.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-4-203. Open range defined. In 81-4-204, 81-4-207, and 81-4-208, the term "open range" means all lands in the state of Montana not enclosed by a fence of not less than two wires in good repair. The term "open range" includes all highways outside of private enclosures and used by the public whether or not the same have been formally dedicated to the public.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

Cross-References

Fencing of open range, Title 60, ch. 7, part 1.

81-4-204. Male equine animals not to run on open range. It shall be unlawful for any owner, person, firm, corporation, or association having the management or control of any stallion, ridgeling, unaltered male mule, or jackass over the age of 1 year to permit or suffer such animal to run at large on the open range.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

81-4-205. Male equine animals running at large as nuisance — abatement. Any such animal so running at large is a public nuisance, which, in addition to the means and proceedings prescribed by this part for its abatement and removal, may be abated and removed by the means and proceedings provided by law for the abatement or removal of public nuisances.

History: En. Sec. 2, Ch. 63, L. 1925; amd. Sec. 2, Ch. 85, L. 1931; re-en. Sec. 3400.2, R.C.M. 1935; amd. Sec. 52, Ch. 12, L. 1977; R.C.M. 1947, 46-1708.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Procedure for abatement and removal of public nuisances, 45-8-112.

81-4-206. Killing animal to prevent injury not prohibited. Sections 81-4-203 through 81-4-209 are not intended and shall not be interpreted or understood to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

History: En. Sec. 5, Ch. 63, L. 1925; amd. Sec. 5, Ch. 85, L. 1931; re-en. Sec. 3400.3, R.C.M. 1935; R.C.M. 1947, 46-1711.

81-4-207. Castration of animals running at large — notice to owner — expense and charges. (1) Any person may take up and secure any such animal found running at large on the open range. After taking it up he shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by him or his agent to the effect that the animal, describing it by marks and brands (if any), color, and sex, was taken up on the day named while it was running at large on the open range in the county (naming the county) and that, unless claimed and removed within 5 days next after the date of the posting, the animal will be castrated at the expense of the owner thereof. Should the owner, person, firm, corporation, or association having management or control of such animal be known to the person who took the animal up, personal service of such notice upon the owner, person, firm, corporation, or association having management or control of the animal shall be the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days next after the date of the notice served personally, the animal will be castrated at the expense of the owner thereof.

(2) If such animal so taken up be not claimed and removed within said 5 days or said 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration shall be paid by the owner. If such animal be claimed within the time herein prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of the keeping and feed thereof since it was taken up and also the sum of \$5 for the taking up and giving of the notice aforementioned. Upon making such payments the claimant shall immediately remove and take away said animal.

History: En. Sec. 3, Ch. 63, L. 1925; amd. Sec. 3, Ch. 85, L. 1931; re-en. Sec. 3400.3, R.C.M. 1935; R.C.M. 1947, 46-1709.

81-4-208. Killing of animal running at large — notice — posting and service. (1) If any such animal so running at large cannot, by reasonable

effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it shall take the animal off the open range and restrain it from running at large thereon within 10 days next after the giving of notice as hereinafter provided. The notice shall be signed by one or more taxpayers of the vicinity of the range whereon such animal be at large and be substantially as follows:

"To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in County, Montana. Unless said animal be removed therefrom and restrained from running at large on open range, within 10 days next after the date of this notice, it will be killed.

(Date)

(Signature or signatures)"

(2) The notice shall be posted at the post office nearest the place where the animal was last seen on the range and like notices in two other of the most public places in the vicinity of said range, and like notice shall at once be mailed to the owner or person having management or control of the animal, if his name and address be known.

History: En. Sec. 4, Ch. 63, L. 1925; amd. Sec. 4, Ch. 85, L. 1931; re-en. Sec. 3400.4, R.C.M. 1935; R.C.M. 1947, 46-1710.

81-4-209. Penalty for violations. An owner, person, firm, corporation, or association violating any provisions of 81-4-203 through 81-4-209 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 6, Ch. 63, L. 1925; amd. Sec. 6, Ch. 85, L. 1931; re-en. Sec. 3400.5, R.C.M. 1935; R.C.M. 1947, 46-1712; amd. Sec. 1, Ch. 92, L. 1995.

81-4-210. Only purebred bulls to run at large — limitation on time. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a purebred bull of a recognized beef type; and no bull shall be turned upon or allowed to run at large upon any such public highways, open range, or national forest reserve between December 1 and June 1 of each and every year.

History: En. Sec. 1, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3403, R.C.M. 1921; amd. Sec. 1, Ch. 53, L. 1925; re-en. Sec. 3403, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1943; R.C.M. 1947, 46-1716.

81-4-211. Female breeding cattle, purebred bull to accompany. (1) Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon the range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months or more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. Any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by 81-4-210 through 81-4-213 must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in 81-4-210 through 81-4-213, shall be a purebred bull selected by a committee of permittees.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3404, R.C.M. 1921; re-en. Sec. 3404, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1957; amd. Sec. 53, Ch. 12, L. 1977; R.C.M. 1947, 46-1717.

81-4-212. Castration of violating bulls. Any bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding such a bull, provided any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person, and if the owner of such bull does not take possession of said bull within 24 hours after being notified, the party holding such bull may castrate him.

History: En. Sec. 4, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3406, R.C.M. 1921; re-en. Sec. 3406, R.C.M. 1935; R.C.M. 1947, 46-1719.

81-4-213. Penalty. Any person or persons, firm, company, or corporation violating any of the provisions of 81-4-210 through 81-4-213 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3405, R.C.M. 1921; re-en. Sec. 3405, R.C.M. 1935; R.C.M. 1947, 46-1718; amd. Sec. 2, Ch. 92, L. 1995.

81-4-214. Branding animals running at large — running irons prohibited. Every person except an owner, and the owner only when branding on the owner's own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year and every person who shall at any time brand or cause to be branded or marked any horse, mule, cattle or head of cattle, sheep, llama, alpaca, bison, swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron must be of the same design as the brand or mark owned by the party using it, or who marks or brands or causes to be marked or branded any of the animals listed in this section with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles, is punishable by imprisonment in the county jail for not exceeding 6 months or by a fine of not less than \$25 or more than \$500, or both.

History: En. Sec. 1189, Pen. C. 1895; re-en. Sec. 8863, Rev. C. 1907; re-en. Sec. 11553, R.C.M. 1921; re-en. Sec. 11553, R.C.M. 1935; Sec. 94-3522, R.C.M. 1947; re-des. 46-1720 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-1720; amd. Sec. 11, Ch. 166, L. 1989; amd. Sec. 8, Ch. 417, L. 1993.

Cross-References

Recording of brands required, 81-3-102.

Illegal branding or altering or obscuring of brand, 45-6-327.

81-4-215. Liability of owners of stock for trespass. If any cattle, horses, mules, asses, hogs, sheep, llamas, alpacas, bison, or other domestic animals break into any enclosure and the fence of the enclosure is legal, as provided in 81-4-101, the owner of the animals is liable for all damages to the owner or occupant of the enclosure. This section may not be construed to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without the consent of the person taking the animal, is guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en. Sec. 3379, R.C.M. 1921; re-en. Sec. 3379, R.C.M. 1935; amd. Sec. 146, Ch. 310, L. 1974; amd. Sec. 51, Ch. 12, L. 1977; R.C.M. 1947, 46-1410; amd. Sec. 1, Ch. 35, L. 1983; amd. Sec. 3, Ch. 92, L. 1985.

81-4-218. Marking land and mining claims in national forest. It shall be the duty of the owner or the person holding possessory right to all unfenced lands or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana or which lie on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R.C.M. 1921; re-en. Sec. 3380, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1963; R.C.M. 1947, 46-1411.

Cross-References

Manner of locating claim, 82-2-101.

81-4-219. Method of marking. For the purposes of 81-4-218 through 81-4-220, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

History: En. Sec. 2, Ch. 222, L. 1921; re-en. Sec. 3381, R.C.M. 1921; re-en. Sec. 3381, R.C.M. 1935; R.C.M. 1947, 46-1412.

Cross-References

Manner of locating claim, 82-2-101.

81-4-220. Marking — right of action against trespassing stock. No person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of 81-4-218 through 81-4-220, shall have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven or whether said livestock were herded or driven on said land, provided that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to. In no event shall damages other than nominal damages be assessed against said trespass unless the landowner or his duly authorized agent shall, within 6 months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R.C.M. 1921; amd. Sec. 1, Ch. 78, L. 1927; re-en. Sec. 3382, R.C.M. 1935; amd. Sec. 2, Ch. 31, L. 1963; R.C.M. 1947, 46-1413.

Cross-References

Definition of enter or remain unlawfully,
45-6-201.

Part 3

Herd Districts

81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana upon petition of owners or possessors of 55% of the land in the district and providing that 25% or more of the land in the district is in actual cultivation or being used for residential purposes. Herd districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when the territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people.

(2) In formation of a herd district the entire holding of any owner or lessee must be included unless the owner or lessee consents that less than the owner or lessee's entire contiguous holdings be included in the petition.

(3) The petition must designate the months of the year when the herd district is effective, and upon presentation and filing of the petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the petition signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of that county, upon receipt of the petition, shall set a date for hearing protests and verifying the petition signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to the notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but the district shall be established only in a manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of the district. It is not required that the boundaries of a district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.

(4) Should it appear to the county commissioners after the hearing that the signatures attached to the petition were genuine, they shall immediately declare the herd district created and established. After making the declaration, the county commissioners shall give notice by four weekly publications in a newspaper nearest the district of the creation of the district, also stating the period that the district will be in effect. A district may not be in effect until 30 days have expired after the order.

(5) If the signature of lessee appears on the petition creating or abolishing any herd district, the owner or owners of the land may appear either in person or agent and enter their protest and the board of county commissioners shall

remove the name of the lessee from the petition, and a person may not withdraw the person's name after the hour set for hearing the protest.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(a); amd. Sec. 1, Ch. 488, L. 1979; amd. Sec. 1, Ch. 138, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 138 in (5) at beginning deleted "Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created and upon like hearing and notice as

hereinabove provided for, such lands shall be included in said herd district and become a part thereof"; and made minor changes in style. Amendment effective October 1, 1999.

81-4-302. Dissolution. (1) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district and that less than 25% of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for 3 successive weeks in some newspaper of general circulation in the county.

(2) At the time fixed for hearing, the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved and that less than 25% of the lands included in such district are in actual cultivation, then the board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the herd district is thereby dissolved. Forthwith, upon the making and entry of any such order aforesaid, the herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(b).

81-4-303. Exclusion of government land. Any tract of land embraced within any established herd district and which contains 18 sections of government land or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice, and hearing and by a like order as in the case of proceedings for dissolving herd districts. When the exclusion of any such tract of land from an existing herd district is sought, the petition shall describe the

tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of 55% or more of the lands lying within the boundaries of the tract to be excluded and that less than 15% of the lands included in such tract is in actual cultivation. In any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true, its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition, which shall be further set forth with common certainty in the order, is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(c).

81-4-304. Joint herd districts. Herd districts may be created jointly between any two or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(d).

81-4-305. Changing time when herd districts will be in effect — petition — notice — hearing. The time of year or period when any herd district heretofore or hereafter created under the provisions of the laws of this state is effective or will be in effect may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county a petition signed by the owners or possessors of 55% of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by posting five notices of hearing in five public places in the county, one of which shall be at the place such hearing is to be held and at least two of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the

signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four weekly publications in some newspaper in the county nearest such district, stating the period such district will be in effect. The change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice, such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

History: En. Sec. 1, Ch. 78, L. 1931; re-en. Sec. 3389.1, R.C.M. 1935; R.C.M. 1947, 46-1507.

81-4-306. Penalty for permitting animals to run at large in herd districts. (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats, who willfully permits the animals to run at large within any herd district, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$250 for each offense. Each day that each five head or less of horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats are willfully permitted to run at large constitutes a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully permits the animal to run at large within any herd district is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$250 for each offense. Each day that a bull is permitted to run at large constitutes a separate offense.

History: En. Ch. 74, L. 1917; amd. Sec. 3, Ch. 167, L. 1919; re-en. Sec. 3385, R.C.M. 1921; amd. Sec. 1, Ch. 45, L. 1925; re-en. Sec. 3385, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1945; R.C.M. 1947, 46-1502; amd. Sec. 2, Ch. 488, L. 1979; amd. Sec. 13, Ch. 166, L. 1989; amd. Sec. 8, Ch. 417, L. 1993.

81-4-307. Trespassing animals in herd district — retention for damages and costs. (1) If an animal referred to in 81-4-306 wrongfully enters the premises of a person within a herd district, the owner or person in control of the animal is liable for care and feeding of the animal and for any damages caused by the animal. The owner or occupant of the land upon which the wrongful entry is made may take into possession the animal, may reasonably care for the animal, may retain possession of the animal, and is entitled to a lien on the animal as security for the payment of damages caused by the animal and costs incurred in caring for the animal. If the owner of the animal or the person entitled to possession of the animal can be found or is known to the person who takes possession of the animal for trespass, it is the duty of the person taking possession to notify the owner or person in charge of the animal within 48 hours after taking possession by a notice in writing, mailed as a certified letter, directed to the owner or person in charge at the owner's or person's post-office address or by serving the notice on the owner or person personally. The notice must give a particular description of the animal and state the amount of damages and costs claimed and demand that within 48 hours after receipt of the notice the damages and costs be paid and that the animal be taken away from the property of the complainant.

(2) Upon demand and upon payment of the damages and costs, the owner or occupant of the land shall release and deliver possession of the animal to the owner or person entitled to possession of the animal. If the parties cannot agree upon the amount, then the owner or person entitled to possession of the animal shall give a receipt to the owner or occupant of the land who has possession of the animal. The receipt must fully describe the animal so that the animal may at any time be easily identified. Upon receiving the receipt, the owner or occupant of the land shall give possession of the animal to the owner or person entitled to possession of the animal. The owner or person receiving possession of the animal may not dispose of the animal but shall retain and keep the animal in possession as the legal custodian of the animal in order to meet and pay the amount of the lien on the animal for damages and costs due in consequence of the trespass.

(3) The party entitled to damages or costs shall within 10 days after delivery of possession of the animal commence an action in any court having jurisdiction to recover the damages and costs, and the animal must be held for the payment of any judgment as though held under a writ of attachment. At any time after the action is commenced, the owner or person entitled to possession of the animal, to whom delivery was made, may furnish and file a bond conditioned to pay the damages and costs incurred in the action, and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the animal must be discharged.

(4) If the owner or person entitled to possession of the animal does not furnish a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the animal to satisfy any judgment that may be recovered in the action. The animal, when taken possession of by the officer, must be held, treated, and sold under execution as though seized by writ of attachment.

(5) The owner or person entitled to possession of the animal may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment that may be recovered in the action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to possession of the animal, after delivery of possession without payment of damages and costs provided for in this section, sells or disposes of the animal or any part of the animal, permits the animal to be taken from the person's possession, or in any manner prevents the seizure of the animal by the constable or sheriff before the lien on the animal is fully discharged, the owner or person entitled to possession of the animal is guilty of a misdemeanor and in addition is liable to the party entitled to damages and costs in an amount that is double the value of the animal. At the time of delivery or possession of the animal to the owner or person entitled to possession of the animal, a written statement of the amount of the damages and costs must be furnished to the owner or person entitled to the possession of the animal by the person claiming the damages and costs.

(6) If the owner or claimant of the animal is not known to the person taking possession of the animal, the person shall give notice within 48 hours by posting a notice at the nearest post office and serving a similar notice on the stock

inspector of the district. The notice must describe the animal and the brand on the animal and give a minute description of the animal, together with the date of the trespass.

History: En. Ch. 74, L. 1917; amd. Sec. 4, Ch. 167, L. 1919; re-en. Sec. 3388, R.C.M. 1921; amd. Sec. 1, Ch. 165, L. 1931; re-en. Sec. 3388, R.C.M. 1935; R.C.M. 1947, 46-1503; amd. Sec. 96, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in throughout section substituted reference to "costs" for reference to "charges"; in (1) near middle of third sentence before "certified letter" deleted "registered or"; and made minor

changes in style. Amendment effective March 15, 1999.

Cross-References

Writ of attachment, Title 27, ch. 18.

Definition of enter or remain unlawfully, 45-6-201.

Penalty for misdemeanor, 46-18-212.

81-4-308. Retrieval of impounded animals a misdemeanor — penalty. Any person who takes or rescues any animal impounded as provided in 81-4-307 from the possession of the person in whose custody the same may be, without his consent, shall be guilty of a misdemeanor and upon conviction therefor be subject to a fine of not less than \$100 or more than \$500 or shall be confined in the county jail not more than 60 days or both such fine and imprisonment.

History: En. Sec. 6, Ch. 167, L. 1919; re-en. Sec. 3388, R.C.M. 1921; re-en. Sec. 3388, R.C.M. 1935; R.C.M. 1947, 46-1505; amd. Sec. 3, Ch. 488, L. 1979.

81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty. Any person not the owner or person in charge of any livestock who causes any livestock to enter any herd district established under the provisions of 81-4-301 through 81-4-309 is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not less than \$250 or more than \$500 or confinement in the county jail not less than 60 days or both such fine and imprisonment and is liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved constitutes a separate offense.

History: En. Sec. 7, Ch. 167, L. 1919; re-en. Sec. 3389, R.C.M. 1921; re-en. Sec. 3389, R.C.M. 1935; R.C.M. 1947, 46-1506; amd. Sec. 3, Ch. 14, L. 1979; amd. Sec. 4, Ch. 488, L. 1979.

81-4-310. Annexation into existing herd district. (1) Owners or possessors of land that is contiguous to a herd district may petition to have their property annexed to that district. The petition must be properly signed by all affected owners or possessors of land and must include the post-office address of all petition signers. The petition must state the outside boundaries and a description of the property to be annexed to the existing district. When the petition is filed with the clerk and recorder in the county in which the existing district lies, the county commissioners of that county shall set a date for hearing protests and verifying petition signatures. The county commissioners shall provide notice of the hearing by publishing the hearing date and a list of the properties proposed to be annexed, at least three times in a newspaper of general circulation in the county, not less than 20 days prior to the hearing date.

(2) At the hearing held pursuant to subsection (1), the county commissioners shall examine the petition and have a map drawn up in order to determine the shape and regularity of the boundaries of the property

proposed for annexation. If the county commissioners determine that the boundaries are reasonably regular and symmetrical in shape in relation to the geographical features of the properties proposed for annexation, the county commissioners may declare that those properties are annexed into the existing herd district.

(3) If the county commissioners declare the properties annexed to the existing herd district, they shall give notice of the annexation by four weekly publications in a newspaper of general circulation in the county. Annexation does not become effective until 30 days after the declaration of annexation is made, as provided in subsection (2).

History: En. Sec. 2, Ch. 138, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

81-4-311 through 81-4-320 reserved.

81-4-321. Definition. The term "horses" when used in 81-4-321 through 81-4-328 shall include any mare, gelding, stallion, colt, foal, filly, mule, jack, and jenny.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).

81-4-322. Horse herd districts — size — location — petition — notice and hearing — abolishment. (1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of such district. Such district shall contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. Such petition shall designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers thereof, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county upon receipt thereof shall set a date for hearing protests and verification of signatures thereto and shall give not less than 20 days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district. Should it appear to such county commissioners, after such hearing, that the signatures attached to such petition were genuine, they shall immediately make an order declaring such horse herd district created and established, after which the county commissioners must give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when such horse herd district will be in effect and when such district shall not be in effect. Such order shall not be effective until 30 days have expired after the order.

(3) Such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 shall be paid by the petitioners, and no part thereof shall be paid by the county.

(5) Upon petition of any owner or possessor of land lying contiguous and adjoining any herd district heretofore created and upon like hearing and notice as hereinabove provided for, such lands shall be included in such herd district and become a part thereof.

(6) Should the signature of a lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

History: En. Sec. 1, Ch. 119, L. 1931; amd. Sec. 1, Ch. 57, L. 1933; re-en. Sec. 3389.2, R.C.M. 1935; R.C.M. 1947, 46-1601.

81-4-323. Petition to dissolve horse herd district — hearing and notice — order of county commissioners. When a petition praying that any established horse herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district, the county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week, for 3 successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Sec. 4A, Ch. 119, L. 1931; re-en. Sec. 3389.6, R.C.M. 1935; R.C.M. 1947, 46-1605.

81-4-324. Horses running at large in herd district prohibited. All horses are hereby prohibited from running at large within any horse herd district as defined in 81-4-322.

History: En. Sec. 2, Ch. 119, L. 1931; re-en. Sec. 3389.3, R.C.M. 1935; R.C.M. 1947, 46-1602.

81-4-325. Penalty and liability for horses wrongfully entering on premises in horse herd district. If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of 81-4-309 and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.

History: En. Sec. 3, Ch. 119, L. 1931; re-en. Sec. 3389.4, R.C.M. 1935; R.C.M. 1947, 46-1603.

81-4-326. Retention and sale of horses for damages and care — procedure. (1) The owner or occupant of the land upon which such wrongful entry is made may take into his possession such horse or horses and shall reasonably care for the same while in his possession and may retain possession of said horse or horses and shall have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said horse or horses while in his possession. The person taking up said horse or horses shall within 48 hours after taking possession thereof notify said owner, owners, or persons in charge thereof by a notice in writing, describing said horse or horses taken up, including marks and brands, if any, the amount of damages claimed, and the charge per head per day for caring for and feeding the same, and describing, either by legal subdivisions or other general description, the location of the premises upon which said horse or horses are held and requiring him within 48 hours after receiving said notice to take the said horse or horses away after making full payment for all damages and costs of said horse or horses. Such notice shall be given by personal service on the said owner, owners, or person in charge thereof or by leaving said notice at his usual place of residence with some member of his family over the age of 14 years or by sending said notice by prepaid registered or certified mail addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of such horse or horses to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or person in control of such horse or horses, as hereinbefore provided. If the owner or claimant of such horse or horses is not known to the person taking up such horse or horses or the said owner or claimant shall refuse to pay the amount of damages and charges as herein provided, the said person taking up such horse or horses shall, within 72 hours from the time said horse or horses were so taken up, deliver to the sheriff or a constable of the county in which the horse or horses were so taken up a statement containing the information required to be given in the notice hereinbefore set out, and in addition thereto, he shall mail by prepaid registered or certified mail a copy of said statement addressed to the nearest state livestock inspector. Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses so taken up.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(1), (2).

81-4-327. Sale of horses — disposition of proceeds. (1) Prior to such sale the sheriff shall have said horses classified as follows:

(a) Class 1 shall include:

(i) horses not bearing a registered brand and which in the opinion of the stock inspector are of a value not to exceed \$10 per head; and

(ii) horses bearing a registered brand but which the owner has failed to redeem as herein provided, after notice given, and which in the opinion of the stock inspector are of a value not to exceed \$10 per head.

(b) Class 2 shall include horses bearing registered brands and which in the opinion of the stock inspector are of a value in excess of \$10 per head.

(2) Horses in class 1 shall be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in such county, one of which shall be in that portion of the district included in the county.

(3) Horses in class 2 shall be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and such notice shall likewise be published once a week for 2 successive weeks before said sale in some newspaper published in the county seat of each county including any part of said district, if there be such newspaper, and if there be no newspaper published in any county comprising a part of such district, then such notice shall be published in any newspaper of general circulation in the county or counties including such district. The notice required to be published for the sale of horses in class 2 shall describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale shall be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, shall be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund" (giving number of district if more than one).

(4) A separate fund, styled as above specified, shall be kept by the county treasurer for each of said districts created in his county. The county treasurer shall make a record of the description of each horse, the amount received for same, and the amount of deductions, which record shall be open to public inspection; and any person making claim of ownership of such horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse which shall not be so claimed within 1 year after such sale shall at the expiration of said period be transferred to the general fund of the county.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).

81-4-328. Liability of officers. No officer, board, or employee of any county or any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under 81-4-321 through 81-4-327, and all such acts shall be presumed to have been in good faith and in conformity with 81-4-321 through 81-4-327.

History: En. Sec. 3, Ch. 119, L. 1931; re-en. Sec. 3389.7, R.C.M. 1935; R.C.M. 1947, 46-1606.

Cross-References

Liability exposure, Title 2, ch. 9.

Part 4

Impoundment of Livestock in Municipalities

81-4-401. Certain livestock not to run at large in municipalities. Horses, cattle, mules, sheep, llamas, alpacas, bison, goats, or swine may not be allowed to run at large in any incorporated city or town.

The following exhibit is in a
pamphlet, or newspaper form
which can not be scanned intact.

EXHIBIT: 11#
1.16.01

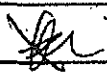
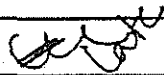
HB: 246

The complete exhibit is located
with the minutes at the Montana
Historical Society Archives
225 N. Roberts
Helena, MT 59620-1201
(406) 444-4775

**HOUSE OF REPRESENTATIVE
ROLL CALL**

AGRICULTURE COMMITTEE

DATE: January 16, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Donald L. Hedges, Chair			
Linda Holden, Vice Chair			
Ralph Lenhart, Vice Chair			
Darrel Adams			
Norma Bixby			
Gilda Clancy			
Rick Dale			
Dave Gallik			
Kathleen Galvin-Halcro			
Christopher Harris			
Verdell Jackson			
Jim Keane			
Larry Lehman			
Holly Raser			
Clarice Schrumpf			
Frank Smith			
Butch Waddill			
Karl Waitschies			
Merlin Wolery			
Krista Lee Evans, Staffer			
Robyn Lund, Secretary			

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Agriculture Committee

DATE January 16, 2001

BILL NO. 246

SPONSOR: Rep. Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

	NAME	ADDRESS	REPRESENTING
POI	Doug Kaercher	315 4th Street Havron	Hill County
POI	MARVIN KIMMET	Box 801 Cut Bank	GLACIER
POI	Randy Smith	Glen, MT	Self
POI	Mark Kambich	Divide, MT	Self - Rancher
POI	Johanne Schultz	Box 219 Chase Range	member of state grazing district
POI	Phil Hill	Mosby	Co. Comm of Area
POI	Robert Evans Jr	Box 14 Geyser	Self
POI	Tucker Hughes	Box 194 Stanford	Self
POI	Dave Baum	2140 York Rd	Self
POI	Ed Chaulin	8950 Chevalier Dr	Self
POI	MIKE MURPHY	P.O. Box 4927 Helena 59604	MWRA
POI	Myrleen Schatz	3291 Contraction	Schatz Ranch
POI			
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Agriculture Committee

DATE January 16, 2001

BILL NO. 246

SPONSOR: Rep. Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
☒ POI	Quersill Keller	Picktail	Residence
☒ POI	Gerrit Keller	"	"
☒ POI	John Novotny	Helena	Self
☒ POI	John Baucus	"	"
☒ POI	Liz Jones	Winn River	Rafter Ranch Self
☒ POI	Kristi Bizer	Helena	Self-education
☒ POI	Florna Karn	502 5019 302-09718	MT FARM BUREAU
☒ POI	Leo Self	Winn River	Self
☒ POI	Leon J. Kille	HC 30 Box 319 HANDE	SELF
☒ POI	Geoff Engene	10 Box 265 Two Dot, MT	SELF
☒ POI	Andy Zerk	Miles City	Self
☒ POI	Mike Meulj	Dayton	Self
☒ POI	Gary Hageberg	Helena	Wood products
☒ POI	Dan Hahn	Townsend	Self

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Agriculture Committee

DATE January 16, 2001

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SPONSOR: Rep. Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

	NAME	ADDRESS	REPRESENTING	
POI	<i>Spatcher, Doreen</i>	<i>Whitehall, MT</i>	<i>Self</i>	<i>(SPEAK)</i>
☒ POI	<i>Tom Holland</i>	<i>Dillon, MT</i>	<i>WESTERN STATES FIREMEN'S ASSN</i>	<i>Fire Ins.</i>
POI	<i>Alan Evans</i>	<i>Rocky Mt</i>	<i>Fergus Elec P</i>	<i>SALES</i>
POI	<i>Larry Descheemaeker</i>	<i>Lewistown, MT</i>	<i>Self</i>	<i>SPEAK</i>
POI	<i>Cpl. Dover</i>	<i>Buffalo, MT</i>	<i>Fergus Cte.</i>	
POI	<i>Pat Purce</i>	<i>Shawmut, MT</i>	<i>Rancher</i>	
POI	<i>Bill Skelton</i>	<i>Stimfied</i>	<i>Rancher</i>	
POI	<i>Jim Fiedler</i>	<i>Stanford, MT</i>	<i>Rancher</i>	
POI	<i>Vern Peterson</i>	<i>212 W Main Lewistown</i>	<i>MACO & Fergus Co.</i>	
POI	<i>DAVID D SMITH</i>	<i>Miles City, MT</i>	<i>Rancher</i>	
POI	<i>Bill Goertz</i>	<i>Malta, MT</i>	<i>Rancher</i>	
POI	<i>Steve Baister</i>	<i>LEWISTOWN, MT</i>	<i>FERGUS ELEC. CO.</i>	
POI	<i>Molly Descheemaeker</i>	<i>Lewistown, MT</i>	<i>WIFF - Rancher</i>	
POI	<i>Terril Sims</i>	<i>Malta, MT</i>	<i>Rancher</i>	

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
Agriculture Committee

BILL NO. 246

DATE 1-16-01

SPONSOR(S) Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI	Bill Darrin	Butte Blount	MSGA
POI	Tony Carroccia	Melville	SELF
POI	Ellie Carroccia	Melville	Self.
POI	Robert Paul	Elk Lake	MSGA
POI	Joe W. Durbin	Winifred	Self
POI	Tom Lowry	Shass Range	Self
POI	Alan Swang	Judith Gap	MSGA
POI	DAN MOORE	HALL	SELF
POI	Jay Lewis	Miles City	MSGA
POI	Tom Dingman	Big Timber	MLA
POI	Rick Dean	Honq	SELF
POI			
POI			
POI			

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
Agriculture Committee

DATE 1-16-01

BILL NO. 246

SPONSOR(S) Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	Tom Hougen	McLystoe, MT	
POI	Pat McNulty	Buffalo MT	
POI	Tim Gill	Helena MT	MT Livestock Ag. Credit Inc.
POI	Beth Emter	Clancy, MT	
POI	Karla Johnson	East Helena, MT	
POI	Brett Holzer	Stanford, MT	
POI	Margaret Cleary	Belgrade, MT	
POI	SIGURD RUDIE	FAIRVIEW, MT	MFD
POI	Jerry Jones	Box 613 Busby MT	
POI	Robert McLean	Box 210, Lame Deer	Self
POI	Lynn Cornwell	Box 466 Glasgow	NCBA
POI	Bob Gilbert	Box 1693 Helena	MT DAIRY ASSN NEW FORM MT WOODGROWERS ASSN. Credit
POI	Dannell Chauvet	Box 147 Sandy MT	MSCA
POI	DAN DINGDALE	458 Hwy 89 N	

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
Agriculture Committee

BILL NO. 246

DATE 1-16-01

SPONSOR(S) Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE

CIRCLE	NAME	ADDRESS	REPRESENTING
POI	David Rigler	Box 34 PRAY, MT	Rancher ^{MT} stock growers
POI	REINY JABS	736 Du Hardin	MT, Self
POI	WEBB BROWN		MT CHAMBER
POI	JOHN Musgrove	810 8 th ST HAURE	HD 91
POI	Bill Tash SDIT	PropONENT	SDIT
POI	Marqueline Spemark	5060 Hutchins	Kulsh Am. Ins. Assn.
POI	William Duffield	Baker, MT.	Fallen Co
POI	Dan Downs	Molt MT	Montana Farmers Union
POI	Bert Deschamps	FRENCH TOWN MT	SELF
POI	ALFRED S. DESCHAMPS	FRENCH TOWN MT	SELF
POI			
POI			
POI			
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
Agriculture Committee

BILL NO. 246

DATE 1-16-01

SPONSOR(S) Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI	Quinn Holzer	Helena Helena	
POI	Todd McCabe	Redstone	
POI	NEAL DYKSTRA	BELGRADE	
POI	John Rose	Three Forks	
POI	Walter J. Taylor III	Bossy	
POI	Rick Kuntz	Dillon	MSGA
POI	Sharon Kinde	WALTA	MEU
POI	Rebecca Wood	Helena	MSGA
POI	Dee Boyer	Lewistown	MSGA
POI	Barth Chapel Boyer	Lewistown	MSGA
POI	Todd Grady	Helena	Ranching
POI	Tom Bangs	Inverness	Farm/Ranch
POI	Linda Swanz	Quail Gap	Ranch
POI	Gail Smith	East Helena	Rancher

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Agriculture Committee

DATE January 16, 2001

BILL NO. 246

SPONSOR: Rep. Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) OI	Greg J. Norssen	505. Last Lane Blvd	Stata Fern Ins. Co
(P) OI	John Swans	H.C. 100 Box 336	MSG A
(P) OI	Landy Walsted	Harlowton, MT 59036	MSG A
(P) OI	Roxanne Berg	Judith Gap, MT 59453	MSG A
(P) OI	Rachel Enderott	Hallister, MT 59740	MSG A
(P) OI	Kari Berg	Martinsdale, MT 59653	MSG A
(P) OI	Larry Berg	Judith Gap MT 59453	MSG A
(P) OI	Trent Woldstael	Harlowton 59036	MSG A
(P) OI	Annie Eugene	TWO DOT, MT 59085	MSG A
(P) OI	Yvonne Jones	64542 Hwy 43 ^{Wise} River, MT	MSG A
(P) OI	Ray Andes	Pompey, Hyman	self
(P) OI	Chayenne Cundall	420 N. California ^{Holena} 59601	MSG A
(P) OI	Jim Garrison	Box 6 Glen, MT	MSG A
(P) OI	Bill Donald	Melville, MT 59045	MSG A

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Agriculture Committee

DATE January 16, 2001

BILL NO. 246

SPONSOR: Rep. Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P)OI	Mike Hankins	SPICOTRACK FARMS P.O. Box 455 Helena	Self & "Mythril" Assn
(P)OI	Steve Barnard	HC 23 Box 12 ^{Mineral}	M.A.S.G.D.
(P)OI	Jeanne Barnard	Box 1411 Malta	Barnard Ranch
(P)OI	Lee Iverson	Box 151 Winnett	Iverson Ranch Petroleum Security
(P)OI	John Gloaguis	—	Mt. Stockjane
(P)OI	BRIAN SEVERIN	PO Box 66 Belt	MSGA
(P)OI	Phil Rostad	226 Rostad Rd WSS	MSGA
(P)OI	Jim Hagenbath	PO Box 1128 Dillon, MT 59725	Self - Hagenbath Livestock
(P)OI	Al Smith	PO-538 Helena 59624	MTLA
(P)OI	Wendy Lee	#22.4 Mile Creek Rd Elt. Falls, MT 59406	
(P)OI	David Sovak	POB 2325 Great Falls, 59403	Mary Larsen Murphy
POI	Mary L. Murphy	4300 Brock House Dr Billings, MT 59105	Self
(P)OI	John Semple	1645 ST Helena	Montana Cattleman's Assn
POI	Hugh McNAULLEN	Helena	Self

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Tom Hougen BILL NO. 246

ADDRESS Box 127 Melstone, MT DATE 1/16/01

WHOM DO YOU REPRESENT? self

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS This bill addresses the issue of
landowners liability to a issue they cannot
completely control. Animals cannot completely be
controlled even with best management practices

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Jerry Jones BILL NO. 246

ADDRESS H.C. 42 Box 613 DATE 11/16/01

WHOM DO YOU REPRESENT? Montana Stockgrowers Association

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS As a Rancher, I try to maintain my fence to the best of my ability. I live in an area in which we have a lot of year around hunting. These people will leave gates open, ~~and~~ and sometimes my cattle may get on the road. I would hate to be liable when I'm not to blame.

We also have a road that is not a county road but our county will grade this road because quite a few people travel it. These people work & recreate along said road.

I would hate to fence across this road to protect myself, But I may if H.B. 246 does not pass.

Agriculture COMMITTEE

PLEASE PRINT

NAME Fred DESCHAMPS BILL NO. HO. 246

ADDRESS 15400 Mill Cr DATE 1-16-01

ADDRESS Frenchtown, Mt 57834 DATE _____
WHOM DO YOU REPRESENT? our Ranch

SUPPORT YES OPPOSE _____ AMEND _____

COMMENTS _____

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME BRETT L. DESCHAUMPS BILL NO. ~~HB0246~~ HB0246

ADDRESS 15400 MILL CK RD DATE 1-16-2001

FRENCHTOWN, MT 59834

WHOM DO YOU REPRESENT? MYSELF & RANCHING OPERATION

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS RANCHERS CAN NOT TAKE ON ADDED RISK AND

LIABILITY OF MOTORIZED VEHICLES AND ANIMAL ACCIDENTS. A

REMEDY ALL READY EXISTS FOR MOTORIST TO CARRY COLLISION

INSURANCE AND HEALTH INSURANCE. MUCH EASIER

TO SPREAD THE INSURANCE RISK OVER 800,000

MOTORISTS IN MONTANA THEN TO SPREAD IT OVER

12,700 COW CAIF PRODUCERS IN MONTANA. IF WE

HAVE 1,000 COW/AUTO ACCIDENTS IN ONE YEAR

WITH DAMAGES IN EXCESS OF \$250,000 THE LIVESTOCK

INDUSTRY IN MONTANA WILL COLAPSE. I SUPPORT THIS

BILL (HB0246).

THANKYOU

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

AGRICULTURE COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Larry Descheemaker BILL NO. 246
HC 85 Box 4270

ADDRESS Lewistown, MT 59457 DATE 1-16-01

WHOM DO YOU REPRESENT? Self

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS If this bill would fail it would
Create tremendous management and
economic problems for our Ranch operation.
We would certainly pressure the County
Commissioners to abandon the County Roads
on our property.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Larry Berg BILL NO. HB ~~244~~ 246

ADDRESS Box 318 Judith Gap MT 59453 DATE 1/16/01

WHOM DO YOU REPRESENT? MSGA

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS _____

I am concerned about my liability &
insurance costs on my ranch operations.
Thank you for your time and consideration on this
matter. I urge you to support the legislation

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Leo Solt BILL NO. HB 246

ADDRESS Box 121
Winnet, MT 59087 DATE 1-16-01

WHOM DO YOU REPRESENT? I own ranch and all ranches in Mont.

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS I am a rancher from Petroleum
County. I urge the passage of this legislation
so as to ~~preserve~~ preserve the ability of
one of the largest industries in our state to
survive. I sympathize with the victims
of accidents but to partially destroy an
industry and is not responsible. The far reaching
consequences of allowing this court decision to stand
will be devastating. Please pass HB 246

Leo Solt

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Mike Hankins BILL NO. HB-246

ADDRESS Specter Farms, Helena, MT P.O. Box 485 DATE 1/16/2001

WHOM DO YOU REPRESENT? Mythbusters (MSB) & Associates

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS See attached sheet

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME LEON LASALLE BILL NO. 246

ADDRESS HC 30 BOX 319 HAVER MT. DATE 1-16-01

WHOM DO YOU REPRESENT? SELF

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS I FEEL IT IS VERY IMPORTANT THAT THIS BILL
PASS. THIS WOULD PUT SOME STABILITY BACK INTO THE CATTLE
BUSINESS IN MT. AS IT NOW STANDS THE CATTLE MAN HAS
EVERYTHING TO LOSE & NOTHING TO GAIN. IT COULD CAUSE MANY
CATTLE PRODUCERS TO EITHER GO OUT OF BUSINESS, SHUT DOWN SOME AREAS
CURRENTLY OPEN TO PUBLIC ACCESS. FENCING ALL PUBLIC HI-WAYS IS NOT
A FEASIBLE ALTERNATIVE. SEVERAL ISSUES NEED TO BE ADDRESSED:
1) HIGH EXPENSE OF FENCING & MAINTAINING A FENCE
2) LARGE LOSS OF INCOME FOR THE STATES LIVESTOCK OWNERS & LAND OWNERS
3) HIGH INSURANCE PREMIUMS
4) LOSS OF PRIVATE LAND ACCESS FOR SPORTSMEN
5) MAY LEAD TO ADVERSE ENVIRONMENTAL BENEFITS E. OVERGRADING, FIRE HAZARDS DUE
TO NON GRAZING ETC.
6) MAY CREATE AN ALIBI FOR DISHONEST PEOPLE TO ACTUALLY
SEEK OUT CATTLE & RUN INTO THEM.

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HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

House Ag. COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME MARK KAMBICHA BILL NO. 246

ADDRESS P.O. Box 34 DATE 1/16/00

WHOM DO YOU REPRESENT? self - Rancher

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS I feel that when the Montana
Supreme Court ruled on the Steiner case, they
really left it wide open. Do we want to see
a state of great openness or do we want a
land that is nothing, but fences.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Jed Evjene BILL NO. 246

ADDRESS P.O. Box 265 Two Dot, Mt 58085 DATE 1-16-01

WHOM DO YOU REPRESENT? American Fork Ranch

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS We are honest quite people, but some times we have to stand
up and say something - I managed three ranches in Central Montana in
which county roads run through the properties and which are not all fenced
at all. Run free in the pastures which these roads cross through. If these roads
get fenced off this plays with the management practices in these pastures,
with fences on these roads it will cut off water to the stock, running
one side will have water and the other side will be without water this causes
major expenses and problems. Hunters and fishermen also use these roads and
we do not want to be liable for them on these roads, in return causes
us to go to the County Commissioners and ask for these roads to be
closed, which is no good for us or for the public interest. My main
question is who will be paying for the fencing & the maintenance to these
fences?

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

AG

COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME BRIAN SEVERIN BILL NO. HB 246

ADDRESS P.O. Box 661, BELT, MT DATE 1/16/01

WHOM DO YOU REPRESENT? MSGA

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS WE HAVE ONE ROAD THROUGH PRIVATE
LAND TO THE FOREST. IF I'M FORCED TO
FENCE THIS ROAD I'LL END UP WITH ALL
THE CREEK ON ONE SIDE AND ALL THE GRASS,
BUT NO WATER ON THE OTHER SIDE. IF
I'M LEFT WITH A LIABILITY MY ONLY
REAL OPTION WILL BE TO PETITION THE
COUNTY TO CLOSE THE ROAD.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Ag

COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Jim Fiedler BILL NO. HB 246

ADDRESS Box 357 Stanford MT DATE 1-16-01

WHOM DO YOU REPRESENT? Self

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: I Drove from Stanford To
Support this Bill If this ~~Bill~~ Bill
Does Not Pass it Will greatly affect
Our Ranch. We Have Many Miles of
Unfenced Roads That Have Never Been
Fence Fenced

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Bill Shelton BILL NO. HB 246

ADDRESS Stanford mt. 59479 DATE Jan 16 2000

WHOM DO YOU REPRESENT? Self

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS _____

Rancher

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agricultural COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Phil Rostal BILL NO. HB 246

ADDRESS 226 Rostal Rd DATE 1-16-01

WHOM DO YOU REPRESENT? MSGA

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS _____

As a landowner with land adjacent to public roads, as are many landowners this bill will help alleviate the liability of livestock and autos. It is impossible to keep livestock off public roads all the time. Fences are not along all public roads and would create a economic hardship to landowners to construct & maintain fences on both sides of all public roads. Fences are not insurance to livestock getting on to roadways.
Please support this bill.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

AGRICULTURE COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Liz Jones BILL NO. 246

ADDRESS 64542 Hwy 43 DATE 1/16/01

WHOM DO YOU REPRESENT? Rafter Ranch - family corp.

SUPPORT X OPPOSE AMEND

COMMENTS We have the scenic by^{way} that
runs from Wise River to Polaris through
our Forest Permits. There is no way
you could ever fence this road. it would
be costly and break up the pasture
rotation systems. F.S. is prepared
to use this as a tool to limit
gazing and we don't need this on
public lands. It is imperative
we overturn the Supreme Court
Ruling and return the law to the
previous interpretation.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Tucker Hughes BILL NO. HB 246

ADDRESS Box 194 Stanford MT. DATE Jan, 16, 2001

WHOM DO YOU REPRESENT? SELF

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS A gravel road passes through our Ranch
Portions of the ranch are fenced, but a majority of our ranch
has cattle guards and is not fenced. A majority of the areas
with cattle guards have NEVER been fenced in history. It is
integral to our resource management to allow the distribution
of livestock as we have in the past. We understand that if HB 246
does not pass and we have cattle in unfenced pasture we are
now being negligent and would be held liable. Our land that
the road passes through is deeded property which has never
been purchased by Judith Basin county or is the land
taken off the tax rolls. We own the land and pay
the taxes and we do not feel we should be subjected
to liability on these gravel roads.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

AGRICULTURE COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME DAVID B. SMITH BILL NO. HB-246

ADDRESS PO BOX 999 miles City MT DATE 01-16-01

WHOM DO YOU REPRESENT? SMITH LIVESTOCK INC

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS IF I am forced to fence or the County Roads
are fenced This will greatly affect the way My Livestock
utilize the forage and water supply available. I will be forced
to drill wells to provide water for each pasture. IF THIS bill
is deficted I will be able to continue to graze on open Range
In Custer, Carter and Garfield Counties where I have open
range These countys have not gone throu The proceidure
to designate County roads I would be forced to either fence
or close these roads to public travel

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HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Ag COMMITTEE
WITNESS STATEMENT

PLEASE PRINT

NAME Andy Zook BILL NO. HB 246

ADDRESS Broadus Stage, Miles City DATE 1/16/01

WHOM DO YOU REPRESENT? Myself a family rancher

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS Without this bill I am concerned with
the liability implications on landowners & stockowners.
Insurance costs for my operation will increase and
my management practices will change. I would have
to close roads to public traffic or try to fence them
off. I would probably cease being part of the Block
Management program. I am also concerned about
the effect on lease ground. Will I possibly be
liable for a landowners negligence, if I lease
grass from him and he doesn't keep up fences,
and my livestock gets involved in an accident.

HOUSE OF REPRESENTATIVE
57TH LEGISLATURE

Agriculture COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Patrick McNulty BILL NO. HB 246

ADDRESS Buffalo MT DATE 01-17-2001

WHOM DO YOU REPRESENT? self

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS There are hundreds of thousands of miles of unfenced county roads in Montana and several hundred miles of unfenced federal and state highways. Roads do not necessarily follow property ownership boundaries, and in those cases where the land lord is state or federal government, the money to pay for fencing has not been appropriated. On the private lands, economic factors make fencing all these roads infeasible. There are additional problems in that much pasture would be cut off from water, etc. The open range law is the only practical solution, and puts no more burden on motorists than necessitated by Montana's wildlife populations. ie. "Drive prudently and be prepared to stop for animals on the road."

Stillwater County Commissioner



Work (406) 322-4888 ext 8010
Fax (406) 322-4888 ext 8007
Home (406) 669-3208

P.O. Box 970
Columbus, MT 59019

December 28, 2000

Senator Ric Holden
164 Road 253
Glendive MT 59330

Dear Senator Holden:

I recently heard a news report which stated that you will be introducing legislation to provide livestock owners some immunity in light of the recent Montana Supreme Court decision which effectively overturns long-standing state law. You are to be applauded for your efforts and your wisdom to recognize the terrible situation a livestock owner is placed because of this decision.

I have long been interested in this area of law, first from personal experience and secondly as a county commissioner. I have not had the chance to review the opinion in detail but am completely shocked by this decision. There cannot be any doubt that this supreme court has crossed the line between interpreting law and writing law, effectively circumventing the legislative process. It has been a long-time opinion of many people that the Supreme Court has on many instances overstepped it's boundary and written legislation from the bench. The irony is having to draft new legislation when adequate laws are already on the books.

I have just finished my year as President of the Montana Association of Counties and have served as a trustee of the Montana Joint Powers Insurance Authority (JPJA) which is the insurance pool of counties for property, casualty and liability insurance. This opinion causes very grave concern for liability issues with counties which typically "permit" cattle guards to be installed in county roads which allows landowners to not fence the road right-of-way. Does this opinion render these permits invalid? Can a county issue new permits? If the county continues to allow cattle guards to be installed are we assuming additional liability?

I raise these issues in hopes of giving you a heads up and asking you to consider this issue also from a county's perspective. Hopefully you might consider inserting language in your bill which would also indemnify counties from liability for issuing permits for cattle guards to landowners for their benefit. I would be willing to provide any assistance and information I may be able which might be helpful in your efforts. Again, I completely support your effort and wish you success.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Harold Blattie".

L. Harold Blattie
Stillwater County Commissioner

HB-246

My Name is Mike Hankins; I am a sixth generation livestock producer and have been involved in various livestock operations in several states since my college days.

I was one of original "mythbusters" a program sponsored by the Montana Livestock Producers Association to deal verbally with the myths and misconceptions surrounding the American public's views of one of this nation's greatest industries, the production of red meat for our people's consumption.

One of the most obvious realities in livestock production in these Western States-especially Montana-is the fact that the utilization of open range is often figured into a rancher's net worth. His ability to run X number of cattle or sheep is often considered by bankers as an integral part of that which determines the ceiling placed on the amount of credit a lending institution will extend him in any given year. The grazing permits and leases he is able to utilize often determine whether he can financially carry the load for another year.

Many of these permits and leases involve government land; BLM and National Forest. The cost of fencing these areas to be frank is prohibitive in 99% of the cases even if the terrain involved lends itself to proper fencing-which it generally does not. In areas where it takes forty acres to run one animal unit the projected cost of adequate fencing exceeds the value of the annual lease by a factor of ten or better. I draw this figure from a published report circulated by the USFS/Bureau of Land Management Study published in 1994-the figure may be greater today.

The quickest way to eliminate one of Montana's basic industries is to create financial burdens on the ranchers that drive these industries. The approximated cost of insurance against litigation involving straying livestock in areas reduced to herd districts would be prohibitive to the average rancher.

There is another issue here. Even in areas where we fence to control livestock the elimination of the open range could spell disaster. The Montana Department of Fish, Wildlife and Parks has spent many thousands of dollars defining and obtaining places where Montana's citizen may hunt and fish on private land. (There is in fact a bill before this legislature to provide a constitutional amendment to preserve this right for all our citizens) But the fact is that the land on which Fish, Wildlife and Parks intends to maintain this program is basically OUR land. And the other fact of the matter is that every one of us has had to deal with gates left open and sometimes cut fences as a part and parcel of participation in this program. The issue of liability to us, the ranchers, because of some other parties negligence, has been negated up to now by the open range law. Should the Montana Supreme Court decision regarding de facto closure of the open range be left standing, I fear most of us, to protect ourselves, may indeed remove our lands from block management and post what we have to protect ourselves and our industry.--

(Conclude)

Mike Hankins

Hello, my name is Lee Iverson. I am a rancher and a County Commissioner for, Petroleum County Montana.

I support HB 246, because my ranch has 17 miles of unfenced public road, and under the Supreme Court's ruling, I would be liable for an accident simply by running my livestock on my own land.

Petroleum County has 535 miles of public road, of which 90% percent being unfenced is a conservative estimate. This makes about 480 miles of unfenced road in my county.

Since Petroleum County, which is one of the smallest counties in the state of Montana, has that many miles of unfenced road, it follows that the other Montana counties would have many more miles of unfenced road. Therefore it is readily apparent that the Supreme Court ruling is a huge liability problem for the livestock owners of this state.

For these reasons I ask that you support HB 246, which will return Montana to the status of the law as it existed before the Supreme Court decision.

Thank you

HB-246

Mister Chair man and members of the comm

My Name is Steve Barnard

I am the pres. of the M.A.S.G.D.

On behalf of the Grazing districts I would
like to testify in favor of this bill.

There are 26 grazing districts rep.
100,000's thousands of acres of mixed
ownership land.

As many of the roads on these lands
are not fenced. And as a result of the
Supreme Court ruling. The liability to
the districts becomes a major burden
to us which we did not have before.

Steve Barnard
~~Star~~ HC 73 Box 18
Hindale ME. 59241

Executive action HB 246

HOUSE COMMITTEE ON AGRICULTURE

January 25, 2001

PAGE 2 of 5

Motion: REP. ADAMS moved that HB 246 DO PASS.

Discussion:

REPRESENTATIVE MERLIN WOLERY offered amendments and moved them.

Motion: REP. WOLERY moved AMENDMENTS.

Discussion:

Krista Lee Evans gave some information about the amendments. She went through the amendment, which includes 15 parts, and these changes will be shown on the standing committee report, attached to these minutes.

{Tape : 1; Side : A; Approx. Time Counter : 5.9}

REPRESENTATIVE DONALD HEDGES stated that open range laws will stay on the books as they are. The amendments then deal mostly with the herd district area of current law.

Ms. Evans clarified that this amendment doesn't affect either the herd district law or the open range law, it simply inserts a section into the Title 27 liability statutes that addresses the relationship between motorists and livestock/property owners.

REPRESENTATIVE DAVE GALLIK stated that he support the amendments and he said that he took his hat off to Rep. Wolery and Rep. Bales for the work that they have done to reach this compromise.

REPRESENTATIVE HOLLY RASER concurred with REP. GALLIK, she appreciates the work that has been done to address the concerns that we had with the bill.

REPRESENTATIVE DARREL ADAMS asked, of Ms. Evans, if these amendments meet with the approval of the livestock owners. Ms. Evans replied that Rep. Bales worked with Rep. Wolery in bringing these forth. She feels that the amendments do meet the approval of the livestock owners.

REPRESENTATIVE CHRISTOPHER HARRIS asked, of REP. WOLERY, if there is a motorist who is not negligent in any way at all, the owner of the property is not grossly negligent, what would be the effect of this amendment if there is a collision with a bull resulting in death or injury to the motorist; what is the liability status of that situation? REP. WOLERY deferred to John Bloomquist. Mr. Bloomquist replied that if the land/livestock owner is not grossly negligent, then they are not liable. REP.

HARRIS then asked if it was fair to say that the operator of the vehicle has no recourse for medical expenses or damage to the car. **Mr. Bloomquist** said that was probably correct. In terms of the insurance perspective, it would depend on the insurance coverage.

REPRESENTATIVE BUTCH WADDILL asked what the dividing line between negligence and gross negligence is. **Mr. Bloomquist** replied that gross negligence really isn't defined. It is used in a variety of settings where the legislature has elevated what would have to be shown for liability. It is not statutorily defined. The courts have defined gross negligence in a variety of ways as well. He thinks that the best standard is not exorcizing even slight care. Negligence is lack of ordinary care. **REP. WADDILL** asked if the bill, as amended, would it satisfy the livestock owners, concerns too. **Mr. Bloomquist** said it would.

REP. RASER offered an analogy to the committee. If she had some trees next to her property and during the night a tree fell down, she didn't know that it had fallen, someone collided with the tree and hurt themselves. It wasn't her fault that the tree fell, it wasn't the motorist's fault that the tree fell. She can see in this situation that she is not grossly negligent as the land owner that had the tree. If, however, she was aware that the tree was in a weakened condition, someone had told her that the tree was going to fall down, and she didn't do anything about it, the tree fell down and the motorist hit it. In this situation it would be gross negligence and she would be liable. This bill addresses some of those concerns. Livestock owners have a certain amount of control over their animals. This is protecting the livestock owner against those accidents that happen out of their control, but it's not overprotecting the people from taking care of their responsibilities. She stated that she sees this as a good compromise.

REP. HARRIS responded that this is the only area where we would recognize that there is negligent behavior on the part of the owner and say that you are exempt from liability. The tree analogy, if the wind blows the tree down that is an act of God, not negligence. If there is negligence on the part of the tree owner, there is liability.

Ms. Evans said that she feels that it is critical to remember that whether it is a negligence standard or a gross negligence standard, it is a question of fact that can only be determined by the court. It is the standard that must be proved, so they are not immune from liability under this bill if someone hits their livestock. If the court finds that they weren't grossly negligent as the livestock-owner, then there is no negligence

assigned on either side and the auto insurance would cover any property or personal damage.

Vote: AMENDMENT carried unanimously.

Motion: REP. ADAMS moved that HB 246 as amended DO PASS.

Discussion:

REP. HARRIS said that he was concerned about the gap, which is the situation where a motorist, in no fault of their own, collides with livestock, there is negligence on the part of the owner, and yet there is no recourse for the motorist. He suggested that there be an amendment that would require Montana motorists to have liability insurance that would cover property damage and medical costs in the event of a livestock collision. There would be no cost to the livestock owners, it would be imposed on motorist. He feels that the cost of the insurance would be small because there are few livestock collisions. Since this is probably outside the scope of HB 246, he thinks we should consider a committee bill along those lines.

REPRESENTATIVE GILDA CLANCY stated that Montana all ready has a state mandatory insurance law. Liability must be carried on all vehicles. Comprehensive insurance extends to impact with an animal on the road. She doesn't think that there is need for a committee bill. She supports the amended bill.

REP. GALLIK stated that he understands the gap the REP. HARRIS was talking about, but in practicality, if there is going to be a lawsuit, whether or not there is a negligence standard or a gross negligence standard, he believes that you will have to prove gross negligence or you are not going to get a favorable verdict. That gap will be closed by the nature of who we are.

REP. ADAMS commented that he doesn't feel that we need any more requirements.

Motion/Vote: REP. LEHMAN moved that HB 246 DO PASS AS AMENDED.

Motion carried 18-1 with Harris voting no.

HOUSE OF REPRESENTATIVE
ROLL CALL

AGRICULTURE COMMITTEE

DATE January 25, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Donald L. Hedges, Chair	✓		
Linda Holden, Vice Chair			✓
Ralph Lenhart, Vice Chair	✓		
Darrel Adams	✓		
Norma Bixby	✓		
Gilda Clancy	✓		
Rick Dale	✓		
Dave Gallik	✓		
Kathleen Galvin-Halcro	✓		
Christopher Harris	✓		<i>CHH</i>
Verdell Jackson	✓		
Jim Keane	✓		
Larry Lehman	✓		
Holly Raser	✓		
Clarice Schrumpf	✓		
Frank Smith	✓		
Butch Waddill	✓		
Karl Waitschies			✓
Merlin Wolery	✓		
Krista Lee Evans, Staffer			
Robyn Lund, Secretary			

House of Representatives

Roll Call Vote

AGRICULTURE COMMITTEE

DATE 01/25/01 Bill NO. 946 NUMBER

MOTION: DO PASS

Name	AYE	NO
Ralph Lenhart (D)	✓	
Norma Bixby (D)	✓	
Dave Gallik (D)	✓	
Kathleen Galvin-Halcro (D)	✓	
Christopher Harris (D)		✓
Jim Keane (D)	✓	
Holly Raser (D)	✓	
Frank Smith (D)	✓	
Linda Holden (R)	✓ <i>gray</i>	
Darrell Adams (R)	✓	
Gilda Clancy (R)	✓	
Rick Dale (R)	✓	
Verdell Jackson (R)	✓	
Larry Lehmen (R)	✓	
Clarice Schrupf (R)	✓	
Butch Waddill (R)	✓	
Karl Waitschies (R)	✓	
Merlin Wolery (R)	✓	

Hedges

✓

House of Representatives

Roll Call Vote

AGRICULTURE COMMITTEE

DATE ~~APR 10~~ 01/25/01 Bill NO. 246 Amendment NUMBER

MOTION: _____

Name	AYE	NO
Ralph Lenhart (D)	✓	
Norma Bixby (D)	✓	
Dave Gallik (D)	✓	
Kathleen Galvin-Halcro (D)	✓	
Christopher Harris (D)	✓	
Jim Keane (D)	✓	
Holly Raser (D)	✓	
Frank Smith (D)	✓	
Linda Holden (R)	✓ proxy	
Darrell Adams (R)	✓	
Gilda Clancy (R)	✓	
Rick Dale (R)	✓	
Verdell Jackson (R)	✓	
Larry Lehmen (R)	✓	
Clarice Schrumpf (R)	✓	
Butch Waddill (R)	✓	
Karl Waitschies (R)	✓ proxy	
Merlin Wolery (R)	✓	

Hedges

✓

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

AGRICULTURE COMMITTEE

DATE January 25, 2001

EXECUTIVE ACTION HB 246

SPONSOR(S) Keith Bales

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
☒ POI	Laila Smil	Ensl-Helena	Land Owner
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			
☐ POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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HOUSE STANDING COMMITTEE REPORT

January 25, 2001

Page 1 of 3

Mr. Speaker:

We, your committee on Agriculture report that House Bill 246 (first reading copy - white) do pass as amended.

Signed: Donald L. Hedges
Representative Donald L. Hedges, Chair

And, that such amendments read:

1. Page 1, lines 5 through 6.
Following: "PROPERTY" on line 5
Strike: "IN AN OPEN RANGE OR A HERD DISTRICT"

2. Page 1, lines 6 through 7.
Following: "HIGHWAYS" on line 6
Strike: "IN OPEN RANGE OR IN A HERD DISTRICT"

3. Page 1, line 8 through 9.
Following: "PROPERTY" on line 8
Strike: "IN AN OPEN RANGE OR HERD DISTRICT"

4. Page 1, line 9.
Following: "IS NOT"
Strike: "LIABLE"
Insert: "SUBJECT TO LIABILITY"

5. Page 1, line 10.
Following: "LIVESTOCK"
Insert: "UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS
GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT"
Strike: "AMENDING SECTION 81-4-203, MCA;"

6. Page 1, line 15 through Page 2, line 7.
Strike: sections 1 and 2 in their entirety

Committee Vote:
Yes 18, No 1.

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9-26

Renumber: subsequent sections

7. Page 2, lines 9 through 10.

Following: "owner" on line 9

Strike: "open range or herd district"

Insert: "accidents involving motor vehicles and livestock"

8. Page 2, line 12.

Strike: ", as defined in 60-1-103(19),"

Following: "not"

Strike: "liable"

Insert: "subject to liability"

9. Page 2, line 14.

Strike: "as provided in 60-7-203 and [sections 1 and 2]"

Insert: "unless the owner of the livestock or property was
grossly negligent or engaged in intentional misconduct"

10. Page 2, line 15.

Following: "section,"

Insert: "the following definitions apply:

(a) "Highway" has the meaning provided in 60-1-103(19);

(b) "Livestock" has the meaning provided in 15-1-101; and

(c)"

Strike: ""person""

Insert: ""Person""

11. Page 2, line 16.

Following: "company,"

Insert: "limited liability partnership,"

12. Page 2, lines 18 through 22.

Strike: section 4 in its entirety

Renumber: subsequent sections

13. Page 2, lines 24 through 28.

Strike: subsections (1) and (2) in their entirety

14. Page 2, line 29.

Strike: "(3) [Section 3]"

Insert: "[Section 1]"

15. Page 2, line 30.

Strike: "[section 3]"

Insert: "[section 1]"

January 25, 2001
Page 3 of 3

- END -

201622SC.hdc

HOUSE BILL NO. 246

INTRODUCED BY K. BALES, ANDERSEN, BARRETT, BECK, BUTCHER, CLANCY, E. CLARK, COLE, CURTISS, DALE, DAVIES, DEVLIN, EKEGREN, ELLIS, ESP, HEDGES, R. HOLDEN, JAYNE, KASTEN, LAIBLE, LENHART, MCCANN, NELSON, OLSON, A. PETERSON, PATTISON, PRICE, RICE, RIPLEY, ROME, SCHRUMPF, STEINBEISSER, STORY, TASH, TESTER, B. THOMAS, TROPILA, WAITSCHIES, WANZENRIED, WITT, WOLERY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON WHO OWNS PROPERTY ~~IN AN OPEN RANGE OR A HERD DISTRICT~~ DOES NOT HAVE A DUTY TO PREVENT LIVESTOCK FROM WANDERING ON HIGHWAYS ~~IN OPEN RANGE OR IN A HERD DISTRICT~~; PROVIDING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON OWNING PROPERTY ~~IN AN OPEN RANGE OR HERD DISTRICT~~ IS NOT ~~LIABLE~~ SUBJECT TO LIABILITY FOR DAMAGES OR INJURY CAUSED BY AN ACCIDENT INVOLVING A MOTOR VEHICLE AND LIVESTOCK UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT; ~~AMENDING SECTION 81-4-203, MCA,~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. No duty of livestock owner or property owner to prevent livestock from wandering on highways -- open range. (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock in an open range or a person owning property in an open range:~~

~~(a) does not have the duty to keep livestock off any highway, as defined in 60-1-103(19), that traverses, is located on, or is adjacent to the open range; and~~

~~(b) is not liable for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock that occurs on a highway, as defined in 60-1-103(19), that traverses, is located on, or is adjacent to open range.~~

~~(2) As used in this section, "person" means an individual, partnership, corporation, limited liability company, or association.~~

~~NEW SECTION. Section 2. No duty of livestock owner or property owner to prevent livestock from wandering on highways -- herd district. (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property in a herd district:~~

~~(a) does not have the duty to keep livestock off any highway, as defined in 60-1-103(19), that traverses, is located on, or is adjacent to a herd district; and~~

~~(b) is not liable for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock that occurs on a highway, as defined in 60-1-103(19), that traverses, is located on, or is adjacent to a herd district.~~

~~(2) As used in this section, "person" means an individual, partnership, corporation, limited liability company, or association.~~

NEW SECTION. Section 1. Limits on liability of livestock owner or property owner in open range or herd district ACCIDENTS INVOLVING MOTOR VEHICLES AND LIVESTOCK.

(1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property has no duty to keep livestock from wandering on highways, ~~as defined in 60-1-103(19),~~ and is not liable SUBJECT TO LIABILITY for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock ~~as provided in 60-7-203 and [sections 1 and 2]~~ UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT.

(2) As used in this section, THE FOLLOWING DEFINITIONS APPLY:

(A) "HIGHWAY" HAS THE MEANING PROVIDED IN 60-1-103(19);

(B) "LIVESTOCK" HAS THE MEANING PROVIDED IN 15-1-101; AND

(C) "person" "PERSON" means an individual, partnership, corporation, limited liability company, LIMITED LIABILITY PARTNERSHIP, or association.

~~Section 4. Section 81-4-203, MCA, is amended to read:~~

~~"81-4-203. Open range defined. In 81-4-204, 81-4-207, and 81-4-208, and [section 1], the term "open range" means all lands in the state of Montana that are not enclosed by a fence of not less than at least two wires in good repair. The term "open range" includes all highways outside of private enclosures and used by the public whether or not the same highways have been formally dedicated to the public."~~

NEW SECTION. Section 2. Codification instruction. ~~(1) [Section 1] is intended to be codified as an integral part of Title 81, chapter 4, part 2, and the provisions of Title 81, chapter 4, part 2, apply to [section 1].~~

~~(2) [Section 2] is intended to be codified as an integral part of Title 81, chapter 4, part 3, and the provisions of Title 81, chapter 4, part 3, apply to [section 2].~~

~~(3) [Section 3] [SECTION 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 3] [SECTION 1].~~

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 4. Applicability. [This act] applies to accidents involving livestock and motor vehicles on or after [the effective date of this act].

- END -

Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 94

Noes: P. Clark, Hurdle, Jayne, Story.

Total 4

Voted Absentee: Bixby, D. Brown, Callahan, Fuchs, Gallus, Harris, McCann, Pattison, K. Peterson, Ayes.

Excused: Lee.

Total 1

HB 242 (Twenty-ninth Legislative Day - Third Reading - House) passed as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 95

Noes: P. Clark, Hurdle, Jayne, McCann, Story.

Total 5

Excused: None.

Total 0

HB 246 (Twenty-third Legislative Day - Second Reading - House) - Representative Bales moved HB 246 do pass. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Erickson, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Haines, Hedges, Himmelberger, Holden, Jackson, Jacobson, Jayne, Jent, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 92

Noes: Eggers, Gutsche, Harris, Hurdle, Juneau, Mangan, K. Peterson, Walters.

Total 8

Voted Absentee: Bitney, Aye.

Excused: None.

Total 0

HB 246 (Twenty-fourth Legislative Day - Third Reading - House) passed as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Dell, Devlin, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Haines, Hedges, Himmelberger, Holden, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman,

Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrupf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 93

Noes: Eggers, Erickson, Gutsche, Harris, Hurdle, Kaufmann.

Total 6

Voted Absentee: Bookout-Reinicke, Dale, Mangan, Witt, Ayes.

Excused: None.

Total 0

HB 246 (Thirty-seventh Legislative Day - Second Reading - Senate) - Senator R. Holden moved HB 246 be concurred in. Motion carried as follows:

Yeas: Berry, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, O'Neil, Roush, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 44

Nays: Bishop, Bohlinger, Ellingson, Harrington, Pease, Ryan.

Total 6

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Glaser excused at this time.

HB 246 (Thirty-eighth Legislative Day - Third Reading - Senate) concurred in as follows:

Yeas: Berry, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Wells, Zook, Mr. President.

Total 43

Nays: Bishop, Bohlinger, Ellingson, Pease, Ryan, Waterman.

Total 6

Absent or not voting: None.

Total 0

Excused: O'Neil.

Total 1

MOTIONS

Senator Cole moved that the rules of the Senate be suspended to allow the late drafting and introduction of a bill regarding telemarketing and slamming of citizens. Motion carried as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

SENATE COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

February 7, 2001

PAGE 2 of 10

HEARING ON HB 246

Sponsor: REP. KEITH BALES, HD 1, OTTER

Proponents: John Bloomquist, Montana Stockgrowers Association
Carol Mosher, Montana Cattlewomens' Association
Bill Garrison, Montana Stockgrowers Association
Carol Lambert, Women Involved in Farm Economics
Nancy Schlepp, Montana Farm Bureau Federation
Mike Murphy, Montana Water Resource Association
Riley Johnson, National Federation of International Business
Mark Diehl, Representing himself
Mike Sjostrom, Montana Livestock Agriculture Credit Incorporated
Cliff Cox, Montana Farm Bureau
Roy Andes, Representing himself
Stillwater County Commission

Opponents:

Buzz and Darwin Doney, Representing themselves
Ben Speakthunder, Fort Belknap Indian Community
Al Smith, Montana Trial Lawyers Association

Opening Statement by Sponsor:

REP. KEITH BALES, HD 1, OTTER opened HB 246 by sharing the House floor vote on the bill. He explained what current law states, and the amendments that were adopted by the House Agriculture Committee. He said that this would protect our heritage.

Proponents' Testimony:

John Bloomquist presented written testimony. EXHIBIT(ags31a02)

Carol Mosher presented written testimony. EXHIBIT(ags31a03)

Bill Garrison shared an example of a man who gave two easements to the Forest Service and if an accident were to occur, he would be liable for the public under current law.

Carol Lambert stated women in agriculture will be forced to change their occupations if this bill does not pass, therefore, she stood in support of the bill.

Nancy Schlepp stood in support of the bill.

Mike Murphy expressed support the bill.

Riley Johnson explained his support for the bill.

Mark Diehl described personal examples of people running through parts of their 15 miles of fences bordering the highway. He said that since 1980, there has been 17 accidents involving his fence. Most of these accidents were alcohol related and unreported.

Mike Sjostrom expressed support for the bill.

Cliff Cox discussed the various possibilities of calves getting through a fence accidentally.

Roy Andes expressed concern with the inconsistencies in the bill in section 1. EXHIBIT(ags31a04) He also discussed further legal issues and presented a small book called the Montana Law Review. EXHIBIT(ags31a05)

SEN. RIC HOLDEN presented letters of support from: Stillwater County Commissioner, L. Harold Blattie EXHIBIT(ags31a06) and Glenn and Doris Waller from Circle, Montana. EXHIBIT(ags31a07)

Opponents' Testimony:

Buzz and Darwin Doney presented written testimony. EXHIBIT(ags31a08).

Ben Speakthunder presented written testimony. EXHIBIT(ags31a09)

Al Smith stated that this issue needs to be focused on the irresponsible landowners and "crack down on drunks".

Questions from Committee Members and Responses:

SEN. COREY STAPLETON asked if all towns or cities were connected with interstate or primary roads. John Bloomquist stated that this was not necessarily true. He referred to the title 60 provision.

SEN. RIC HOLDEN asked if the liability issue would be similar to an individual hitting a deer on the road. John Bloomquist answered, yes.

SEN. GERALD PEASE questioned if the department built fences along the roads that they build and he also asked how long these roadside fences were maintained. Dave Galt, Montana Department of Transportation stated yes, the department is required to fence in high hazard areas on primary or secondary highways although he could not answer questions regarding maintenance.

SENATE COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

February 7, 2001

PAGE 4 of 10

SEN. PEASE referred to line 10 of the bill and asked whose duty it was to keep animals from going on highways. **REP. BALES** referred to the exceptions in the bill and explained that it would not be the duty of the landowner or livestock owner to keep livestock off of the road because, in that case, all of the roads in Montana would have to be fenced. He said again, the livestock owner has no duty and this allows the livestock owner to turn livestock out into pasture.

SEN. STAPLETON asked if the primary National Highway System and the Interstate in the same category. **REP. BALES** said yes.

SEN. HOLDEN clarified **SEN. STAPLETON'S** question.

SEN. STAPLETON explained a near death experience regarding the subject of a cow being on the road and getting in a wreck in which nothing was done because it was considered open range.

SEN. JON TESTER asked the opinion of **Mr. Bloomquist** regarding cattle or horses being on the highway seven times in three months and if that would be gross negligence. **John Bloomquist** claimed that if the livestock owner were told to keep livestock off of the roadways, the police had called to discuss the issue with the livestock owner and nothing had changed, yes, this would pushing gross negligence.

SEN. HOLDEN asked how gravel county roads with cattle guards would be affected in the bill. **REP. BALES** referred to the language of the bill that explains that it would not be the duty of the landowner or the livestock owner to keep animals off of the road. He said that this language protects the questioned rural areas where people know there are cattle in the road.

Closing by Sponsor:

REP. BALES closed HB 246 by commenting on a few remarks from Bill Garrison regarding the man who gave the Forest Service right of ways and the point that **Mark Diehl** made about being responsible for your children and livestock that have minds of their own. He also presented a letter of support from the **Billhart Ranch Co.**
EXHIBIT (ags31a10)

HEARING ON SB 259

Sponsor: **SEN. JON TESTER, SD 45, BIG SANDY**

Proponents: **Blaine County Commissioners**



Montana Stockgrowers Association

Serving Montana's Cattle Industry Since 1884

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-7-01

BILL NO. HB 246

420 N. California
Helena, MT 59601
(406) 442-3420
Fax (406) 449-5105
msga@mtbeef.org

OFFICERS:

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Glen

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Dayton

John Rose
Three Forks

Phil Rostad
White Sulphur Springs

Brian Severin
Belt

MEMORANDUM

To: Senate Agriculture Committee

From: John E. Bloomquist, Montana Stockgrowers Association

Date: February 7, 2001

Re: H.B. 246 (Rep. Bales)

I. Introduction

H.B. 246 (Rep. Bales) is supported by the Montana Stockgrowers Association (MSGA) as a result of the Montana Supreme Court's December 2000 decision in the case entitled Mary Larson-Murphy v. Steiner et al., Cause No. 98-441, December 14, 2000 (Steiner).

In Steiner, the Montana Supreme Court overruled a substantial body of the Court's precedence regarding the relationship of livestock owners and landowners to motorists in Montana. As a result of the Steiner decision, livestock owners and landowners may be subject to liability to a motorist involved in an accident on all public roadways in Montana, whereas before Steiner, potential liability was more limited. This Memorandum supplies information to the Committee on the status of the law before Steiner, the effect of the Steiner decision and the effect of H.B. 246.

II. Discussion

A. Pre-Steiner:

Prior to the Steiner decision, the potential liability for a livestock owner to a motorist was limited. The limitation of liability generally depended on the type of roadway where an accident occurred.

For highways designated by the legislature under Title 60, Chapter 7, Parts 1 and 2, a livestock owner may be liable for damages in an accident involving livestock on a highway or right-of-way as designated by the legislature. These areas are generally areas associated with interstate highways or state "primary" highways as determined by the Highway Commission. On these highways, a livestock owner could be potentially liable,

although there was no presumption of liability, in accidents involving livestock and motorists. See Ambrogini v. Todd, 197 Mont. 111, 642 P. 2d 1013 (1982); Yager v. Deane, 258 Mont. 453, 853 P. 2d 1214 (1993).

For all other highways, the Court had previously held that under Montana's "open-range" doctrine, a livestock owner was not liable to a motorist for an accident involving livestock. This was the rule established in Bartsch v. Irvine, 149 Mont. 405, 427 P. 2d 302 (1967). The Bartsch rationale was subsequently applied by the Court in numerous cases. See Jenkins v. Valley Garden Ranch, 151 Mont. 463 (1968); Sanders v. Mount Haggin Livestock Co., 160 Mont. 73 (1972); Siegfried v. Atchison, 219 Mont. 14 (1985); State ex rel. Martin v. Co., 160 Mont. 73 (1972); Williams v. Selstad, 235 Mont. 137 (1988); and Indendi v. Workman, 272 Mont. 64 (1995).

As such, prior to Steiner, the potential liability of a livestock owner, and any duty to keep livestock off a roadway or right-of-way depended upon whether the roadway was an interstate highway, state primary highway, or some other type of public roadway.

B. The Steiner Decision:

In Steiner, the Montana Supreme Court overruled Bartsch and its successor cases which applied the "open range", no duty rule, to the livestock owner/motor vehicle user relationship on Montana highways. The Court also overruled the Williams decision which applied the no duty rule to roadways within a herd district.

The Steiner Court did not overrule the Todd or Yager decisions regarding the potential liability of a livestock owner on the legislatively designated highways. As such, as to these roadways, the statutory provisions of Title 60 would seemingly still apply.

Under Steiner, the Court applied a general negligence standard of care on livestock owners in accidents involving livestock and a motorist. In Steiner, the Court also extended potential liability to a landowner who may lease property to a tenant who may graze livestock on the property.

C. Effect of Steiner:

After Steiner, a livestock owner or landowner, is potentially liable for an accident involving livestock and a motorist on all Montana public roadways. The previous distinction between designated highways (i.e., interstates and state primary highways) and other highways, seems to be removed under the Steiner decision. As such, a livestock owner whose livestock is involved in an accident on secondary state highways, county roads or other types of public roads may be potentially liable. The standard applied would be governed under general negligence.

Steiner made no distinction between fenced or unfenced highways, open range or herd district areas, and no distinction on the designation or type of highway where an accident may occur. As such, all public roadways in Montana where an accident could occur involving livestock are now sources of potential liability for a livestock owner or landowner.

D. H.B. 246

As introduced, H.B. 246 would have restored the status of the legal relationship between a livestock owner or landowner, and a motorist on Montana's highways, as it existed prior to the Steiner decision.

As introduced, H.B. 246 would statutorily recognize the effect of the Bartsch decision and the line of cases which followed, and recognize that on certain highways a livestock owner or landowner would not be liable, but on other highways (i.e., interstates or primary highways), a livestock owner could be potentially liable.

As amended by the House Agriculture Committee, H.B. 246 would maintain the Pre-Steiner status of the law that a livestock owner or property owner has no duty to keep livestock off public roadways except those identified in Title 60, Chapter 7, Part 2 (i.e. interstates or state primary highways), and would establish a standard of potential liability for a livestock owner or property owner who was "grossly negligent or engaged in intentional misconduct". As amended, H.B. 246 would not allow a livestock owner or landowner who is grossly negligent or engaged in intentional misconduct from potential liability, but would require a potential plaintiff to prove more than ordinary negligence.

MSGA believes H.B. 246, as amended, strikes a needed balance dramatically upset by the Steiner decision.

III. Conclusion

H.B. 246 would statutorily address the standard of potential liability of a livestock owner or property owner in accidents involving motorists and livestock. Without H.B. 246, livestock owners and landowners throughout Montana would face potential liability in any accident which may involve a motorist and livestock under a standard of ordinary negligence. This potential liability may drastically change the management decisions on ranges traditionally used by livestock, access to vast areas of the State where roadways used by the public now exist, and significantly affect this State's livestock industry. MSGA urges your support for H.B. 246.



P.O. Box 1679
Helena, Montana 59624
(406) 442-3420

SENATE AGRICULTURE

EXHIBIT NO. 3

DATE 2-7-01

BILL NO. HB 246

February 7, 2001

Senator Ric Holden and members of the
Senate Agriculture Committee

Mr. Chairman and members of the committee,

My name is Carol Mosher and I am testifying for the Montana CattleWomen in support of HB 246. I am using my own ranch as an example in this testimony,

Our ranch has many miles of fences bordering county and state highways. Some of these fences are 20 to 30 miles from our ranch buildings. We have a good community record of keeping our fences in repair and we immediately get animals back in our pastures whenever they get out. Even with our diligence, let me give you some examples of what has happened to us through the years. Some of these problems have happened in the middle of the night.

1. Flash floods can wash out fences.
2. A vehicle can run off the road and through a fence and knock it down.
3. High winds can knock over long distances of crotch fences.
4. Wild game can knock down fences.
5. Animals can get to fighting and knock out fences.
6. Wolves, coyotes, etc. will chase our animals through fences.
7. Hunters and fisherman will leave gates open, knock down fences and cut wires. We even have had recreationists take our crotch fence posts to build their campfires.
8. A neighbors dry weeds from their CRP field can build up along fence lines and then the fence falls down.
9. We have had terrible forest and range fires that can take out many miles of fence.

We desperately need the protection of HB 246 and ask that you vote in support of this bill. Common sense should be evident that it is not humanly possible to avoid all instances in controlling the action of so many different circumstances.

Thank you for your careful consideration of HB 246.

Respectfully,

Carol Mosher



P.O. Box 1679
Helena, Montana 59624
(406) 442-3420

SENATE AGRICULTURE

EXHIBIT NO. 3

DATE 2-7-01

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Thank you for your careful consideration of HB 246.

Respectfully,

Carol Mosher

Fixed a number of problems:

Problems not fixed by current version of bill:

1. Inconsistency between "no duty" language and "gross negligence standard."
 - a. No duty makes sense if there is no liability (as on unfenced roads)
 - b. Contradictory where any liability applies
2. Doesn't go far enough to protect ranchers regarding unfenced roads
 - a. roads across private lands open to public by permission
 - b. Publicly owned unfenced roads in true open range (unfenced)
 - c. Fenced roads where stock have been permitted to range at large, posted as "open range"
3. Goes too far regarding interface with major cities— narrow band where regular negligence rules should
4. Mischief of courts confusing provision of Title 81, Chapter 4 for liability.

The following exhibit is in a
pamphlet, or newspaper form
which can not be scanned intact.

EXHIBIT: 5
2.7.01
HB 246

The complete exhibit is located
with the minutes at the Montana
Historical Society Archives
225 N. Roberts
Helena, MT 59620-1201
(406) 444-4775 ,

Stillwater County Commissioner



SENATE AGRICULTURE

EXHIBIT NO. 6

DATE 2-7-01

BILL NO. HB 246

Work (406) 322-8010
Fax (406) 322-8007
Home (406) 889-3208

P.O. Box 970
Columbus, MT 59019

February 7, 2001

Senate Agriculture, Livestock and Irrigation Committee
Ric Holden, Chair

Dear Senator Holden and members of the Committee:

I am writing to urge your favorable consideration of HB 246. This bill is a needed response to the recent Montana Supreme Court decision which placed liability for livestock wandering on public roads upon the livestock owner. Since that ruling I have been contacted by numerous constituents seeking advice and information. They are legitimately concerned about potential liability for something over which they may have no control.

In discussing this bill with several constituents they uniformly stated that they preferred the original version over the version approved by the House but felt that the current language would provide protection to livestock owners who make a good faith attempt at keeping their livestock off of public roads.

I can say that I speak on behalf of several livestock owners in Stillwater county and ask that you send this bill to the Senate Floor with a Do-Pass recommendation.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Harold Blattie".

L. Harold Blattie, Commissioner
Stillwater County

Glenn & Doris Waller
P. O. Box R
Circle, Mt. 59215

7
SENATE AGRICULTURE

EMMENT NO. 7

DATE 2-7-01

FILE NO. HB 246

Circle, Mt.
Feb. 2, 2001

Senator Rick Holden
P. O. Box 200500
Helena, Mt. 59620

Dear Senator Holden,

We write this letter to you to support the bill, (HB 246 I believe), which Representative Bales and yourself are sponsoring which would reverse the Supreme Court ruling which could, (and very likely would), subject ranchers to many lawsuits if the ruling is allowed to stand.

If the court ruling is allowed to stand it would be good business for the lawyers but it would be a great hardship for ranchers.

We try very hard to keep our fences in good repair but even so, sometimes an animal might get out. There are also times when gates have been left open or fences cut by other parties and the cattle get out.

Noone seems to claim any responsibility when a deer or some other wild animal is hit and damages result. Why should the rancher be held liable?

Sincerely,

Glenn Waller
Doris Waller

Glenn Waller
Doris Waller

SENATE AGRICULTURE

EXHIBIT NO. 8

DATE 2-7-01

BILL NO. HB 246

February 1, 2001

Senator Rick Holden, Committee Chairman
Agriculture, Livestock, and Irrigation
State Capital Office
Helena, Montana

Bruce Buzz Doney
Fort Belknap Indian
Reservation
Box 220
Hays, Montana 59527

House Bill 246, OPEN RANGE. Testimony.

Senator Holden,

I would like to submit this testimony from another perspective to the state lawmakers in regards to House Bill 246, Open Range. I respectfully urge the lawmakers to reconsider House Bill 246 in its present form. Livestock on our highways and roadways anywhere in the state is a danger to the motorist and passengers and at the very least a hazard to anyone who must use our transportation system to get from one area to another. Although there are many good and responsible livestock owners there are a number who don't care and feel no responsibility to anyone and allow or even in times of need may conveniently put their livestock on our highways on the pretext they got out of the pasture.

My wife was a juvenile probation officer for the Fort Belknap Tribes and a productive member of society. But in the early morning hours of September 5, 1999 my wife and I crashed into a bunch of horses that were on the highway a few miles from our home. My wife died at the scene, some say she was killed instantly. There were approximately 15 to 20 horses on the highway, a small herd and they were running up the highway right at us, I never saw them until the last moment. I tried to react, swerving between 2 colts and slamming into a mass of bodies I saw in the background. Three horses were killed as a result of this collision.

The loss of a life must have ment little if anything to some livestock owners, because from the date of our accident and for the next three months there were 7 accidents involving horses along this five mile stretch of highway from where we crashed, and all resulted in the death of the animal and numerous cost in dollars and insurance to the vehicle owner, not counting the physical injuries and emotional anguish to the people. The statistics I have only go back two years and are dealing with horses, but there are previous years and numerous other cases involving accidents with cattle and other livestock as well. Livestock vehicle accidents play no favorites. About a year or so before our accident, we came upon an accident scene that took place at almost the same spot of highway where we collided with the horses that took my wives life. The vehicle involved this time was an ambulance that was on an emergency run transporting a patient to a Billings hospital. There were horses on the road and the ambulance crashed into them.

This tragedy that took my kid's mother and my wife cast us into a living hell that has yet go away. We feel that the horses that were on the road that fateful night were there because of irresponsible owners. When one looks at this in proper perspective, losses must be calculated to understand the complete picture. Loss's short of human life is measurable no matter how great. Naturally loss to the livestock owner. Loss to the vehicle owner in the fact that their vehicle may have been their only means of transportation, their lifeline to work. There is loss to the insurance companies, which in many instances runs into thousands of dollars. One family who is part of the statistics had a brand new truck they owned for a month and crashed into horses a couple months after we did just up the road from our accident site. Their truck was totaled out and the insurance would only pay \$24,000 on it when she gave \$30,000 for it not including finance charges a month before, she says she is still paying on it. If a person is injured their loss of income is effected. Their quality of life in spending time with their love ones may be effected. But when there is a loss of life this cannot be measured by any means.

My kid's mother, my wife Carol, did not deserve to die this way, in the middle of the night way out in the middle of nowhere, with no help from anyone. When it is all said and done if there were no horses/livestock on the road that night she would still be with us today. No one will ever no the hell we had to live through the night of our loss and to try and cope with it since. In our effort to try and put our life back together we wanted to do something that may keep this tragedy from happening to someone else. Like maybe say, Carols death won't be in vain, or something good come out of it although we have yet to accept it as such, maybe never. Thus we submit this testimony.

Carol was a real asset to the reservation, she had a special way with the kids she worked with and the people she worked with. I truly believe that everyone that knew Carol loved her. She was laughie and witty, and her youthful exuberance and lust for life kept her young, she was 44 but look 24. She never had any easy life while growing up, a middle child of 14 she had hardship and heartbreak that would have destroyed lesser people. After receiving her GED she went on to graduate with honors with a BS Degree from MSU-Billings in 1996. She started a community service program here with kids working off there probation time in a ranch setting working with horses and doing ranch work. Previous years she would help me work with kids in different situations, never receiving pay and never complaining, and never refusing. I bring these positives things to attention to emphasize that society lost a real productive person that made a positive difference in many lives, and whom livestock that had no reason being on the road in the middle of the night took from us.

When we lost Carol it shattered our life, we lost everything, she was our whole life, our kid's and our family. She had a very special relationship with our young son Darwin, 16 yrs old at the time of her death. There was never an angry or mean word between them, nothing but love and affection and respect and adoration. I always thought I never knew a relationship so good and perfect between a mom and son, and it always made a special place in my heart for them each day for bringing me such happiness.

From an economic stand point. Carol was our main wage earner for our family as I was trying to look for a job, as I had not been employed for sometime. When she died we lost our income as well. I was not hired at the place I was temporary teaching at because of what I felt was a result of the accident. We were cast into real financial difficulty not even able to pay monthly bills not alone the funeral expense to bury my wife. We had no insurance on our vehicle as we were going to get rid of it and let the insurance lapse shortly before our accident. Accept for the handouts from my family I don't know how we could of survived. I was so messed up because of the loss of my wife I don't know if I could of worked even if there was a job available. Our two older kids could not help us and I had to be with our young son Darwin 16, as we both needed each other just to get through the day. The injuries I suffered in the accident have nearly disabled me. I had injuries that were missed by the hospitals and after a month I had to go to specialist because of the pain. He said I had a broken elbow in 3 places, now my hand goes numb and he says I have nerve damage. I had always had back problems with rumatiod arthritis but I could still do heavy equipment operation and labor work, now that is severely limited. I injured my neck, which gives me problems along with my back. The top my head was badly swollen, and now I get bad headaches but just take pills.

It would be an understatement to say we would never want another family to go through what we experienced the day we lost Carol. The finger of responsibility can be pointed at any number of people for livestock being on the road, but the statistics here demonstrate a real lack of responsibility by the livestock owners. How can there be so many accidents with livestock/horses in such a short period of time with people from all walks of life? When a highway patrol officer investigates an accident many times they list excessive speed as the cause or contributing cause. Yet many times they never put how fast the person was actually traveling in exact mph. So this could be interpreted as subjective observation. Not all of the people involved with livestock collisions could have been speeding. If this is the case then maybe we need to look at the speed limits. The Montana Drivers Manual states if a person is traveling 50 mph at night and it is clear, it takes approximately 400 ft to gain control of your vehicle and get stopped after once seeing an obstruction. When we hit the horses I was traveling 70 mph off a hill incline and when my lights shined up to the other side of the highway that began to slope up, I glanced at the road ahead and saw the horses. I hit them at less then 300 feet after swerving between two.

Few people will ever know the emotional shock and destruction one experiences from going from the highest high in life with someone you love and enjoy being with, laughing one moment, and 30 seconds or minute later the lowest low you can reach in your life, death of that same person you were happy and laughing with moments before. The moments before we crashed my wife and I was laughing about an incident that happened at her place of work. She was describing it and going through the motions of the people involved and what they were doing. It was funny because of whom it involved and she loved to be graphic. But as she was talking and making motions I would glance back and forth between her and the road. I can still see her looking at me laughing when I glanced back to the road and saw the horses, next a big explosion that blasted us into a hellish nightmare that destroyed everything we ever lived for and everything that was precious to

us. It's no consolation that Carol died laughing. Sometimes I think I went crazy with grief, forgetting everything, seeing nothing, just clinging to my son yet trying to be there for him. No one should ever have to experience this.

Few people will ever know how it is to have to return home in the middle of the night and wake your son from a deep sleep and have to tell him that the person he loves most in his life is never coming home again, will never see them again, and never again get to say, I love you mom. The look that came over his face when I had to tell him about his mom will haunt me for the rest of my life. The look of disbelief where his eyes almost lost their sanity. To have to tell your little nieces/foster kids, and grandchildren that they have no more aunty and grandma. Maybe by providing this testimony to you other little ones and loved ones will not have to be traumatized with what ours had to hear. A father or mother will not have to go home in the middle of the night and tell a son that his mom/dad is never coming home again.

Since the loss of my son's mom and my wife, we done different things to try and cope with our horrendous loss. Sometimes, usually at night when we were having a particularly difficult time in dealing with our loss, we would leave our house and just go drive the highways, by ways, or back roads, until early morning, or all night, in a vehicle or other times on our motorcycles. We were always painfully reminded of our loss because we still encountered livestock on the highways almost every time we drove, both horses and cows. Sagging fences, broken fences, broken post, bad gates, filled in cattle guards, ect, they were all there for everyone to see an irresponsible operator. After speaking with the tribal criminal investigator and chief of police, they stated almost nightly officers are chasing livestock off the road. This should not be as it takes the officer away from his other duties and they definitely have enough to do. In riding our motorcycles we are more vulnerable and have to be more vigilant but nonetheless have had close calls with cows but none with horses yet.

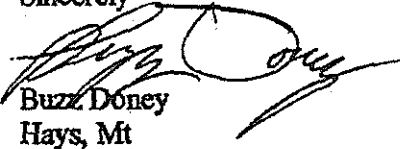
We understand the livestock operators in our state have a very difficult time make ends meet. And we know there are a lot of responsible operators who do everything possible to keep their animals off the roads and highways. We know hunters leave gates open. But we are also know there are livestock operators who will deliberately allow their animals on the highways. In times of drought and little or no rain feed grass in pastures get short and runs out. During these times an owner with a few head of horses or cattle may be tempted to put them on the barrow pits of our highways. During these times of no grass livestock have a tendency to put pressure on the fences that keep them from the lush barrow pits of the roads and highways? There is reason for the barrow pits being lush as the highway is a catch all for whatever rain and moisture comes through and acts as a natural irrigation system. This is an Indian reservation where all this destruction I am talking about has taken place, but it could very well be in any area of the state if a few irresponsible people feel they can get away with it. Livestock don't discriminate and people of all races use reservation highways as well.

The motorist who travels our states roads and highways are at the mercy of something completely out of their control, livestock. We have no say at all whether we choose to

live or die when someone else shirks his or her responsibility. The Fort Belknap Tribal Council has been very supportive in our effort to address this critical issue. This is a credit to them being every one of them have land and property along our highways and all are engaged in livestock at some point or another. But loss of life and responsibility is first and foremost on their minds as well.

In-conclusion I ask that House Bill 246 be carefully re-considered so as other people in our state will never have to go home and tell a young son or little ones that there mom is never coming home again.

Sincerely


Buzz Doney
Hays, Mt
673-3771—383-4306



Carol Jean Doney
Juvenile Probation Officer
Fort Belknap Tribes

Died 9-5-99. Vehicle/Livestock Collision

Fort Belknap Community Council

R.R. 1 Box 66
Fort Belknap Agency
Harlem, Montana 59526
(406) 353-2205
FAX: (406) 353-2797



Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboine and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

JANUARY 24, 2001

TO: Task Force, Open Range
Fort Belknap Agency
Harlem, Montana 59526

FROM: Robert J. Ironmaker, Sr., Supervisory Criminal Investigator

SUBJECT: Statistics for Accidents/Crashes on Vehicle Vs Cow and Horse
Calendar Years 1999 and 2000

The following are the statistics that the Fort Belknap Police Department has on Vehicle Vs Cow and Horse for Calendar Years 1999 and 2000 on the two main highways, U.S. #2 and Route 66. There have been (11) eleven of these incidents as follows:

<u>DATE</u>	<u>APPROXIMATE TIME</u>	<u>DESCRIPTION</u>
July 19, 1999	12:45 p.m.	1992 Ford VS Cow
September 5, 1999	3:19 a.m.	1984 Chevrolet Van VS Horses
October 21, 1999	7:12 p.m.	1980 Ford F250 VS Horse
November 5, 1999	8:10 p.m.	1999 Dodge Ram 2500 VS Horse
November 14, 1999	5:37 p.m.	1997 Ford Taurus VS Cow
November 21, 1999	8:02 p.m.	1989 Plymouth Voyager VS Cow
November 21, 1999	9:05 p.m.	1993 Ford VS Horse
November 26, 1999	6:32 p.m.	1992 Ford VS Cow
January 5, 2000	7:30 p.m.	1989 Oldsmobile BS VS Horse
November 1, 2000	9:15 p.m.	1982 Dodge Truck VS Cow
December 27, 2000	8:31 p.m.	Ford Pickup VS Cow

There have also been numerous reports of either cattle or horses on the roadways that the "On Duty" Police Officer had to run off of the road. We do not have the staff to manually go through the radio logs to count at this time.

Fort Belknap Indian Community

R.R. 1, Box 66
Fort Belknap Agency
Harlem, Montana 59526
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797



LEGISLATIVE AGRICULTURE

EXHIBIT NO. 9

DATE 2-7-01

BILL NO. HB 246

Fort Belknap Indian Community

(Tribal Govt.)

Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboine and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

Chairman ~~Donald Hedges~~ *Ric Holden*
Senate Committee on Agriculture
Livestock & Irrigation
Montana Senate
State Capital
P.O. Box 200500
Helena, MT 59620-0500

February 6, 2001

RE: HB-246

Dear Mr. Chairman Hedges:

On behalf of the Fort Belknap Community Tribal Government of the Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Community, Fort Belknap Indian Reservation we submit the following comment and recommendations on HB-246.

Crossing Fort Belknap are U.S. #2, a Federal Highway Right-of-way (approximately 28 miles), and Mt. State #191 (approximately 3.0 miles) and Mt State #66 (approximately 39 miles), Montana State Rights-of-ways along with several secondary roads to which the rights-of-way are issued to the Bureau of Indian Affairs.

House Bill No. 246 - A Bill for an Act entitled: "An Act clarifying that a person owning, controlling, or in possession of livestock or a person who owns property does not have a duty to prevent livestock from wandering on highways; providing that a person owning, controlling, or in possession of livestock or a person owning property is not subject to liability for damages or injury caused by an accident involving a motor vehicle and livestock UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT; and providing an immediate effective date and an applicability date."

NEW SECTION. Section 1. LIMITS ON LIABILITY OF LIVESTOCK OWNER OR PROPERTY OWNING IN ACCIDENTS INVOLVING MOTOR VEHICLES AND LIVESTOCK. (1) Except as provided in Title 60, Chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling or in possession of livestock or a person owning property has no duty to keep livestock from wandering on highways and is not subject to liability for damages to any property or for injury to a person caused by an

accident involving a motor vehicle and livestock unless the owner of the livestock or property was grossly negligent or engaged in intentional misconduct.

COMMENT: We have had the opportunity to discuss our concerns about 'livestock on highways' with members of the Montana State Highway Department (MSHD) as they relate to Right-of-way fences constructed by the MSHD. We have been informed that the MSHD constructs the right-of-way fence and then "turns over" the maintenance of the fence to the adjoining land-owner. We do not believe this is consistent with the Rights-of-way agreements entered with the Council on these stretches of highway. In each, the State agreed to "maintain" the rights-of-way involved. Allowing the fences to exist in disrepair violates these agreements. Recent Federal Court Cases (ie: 8th Circuit Court - No. 92-3359 - Strate; 9th Circuit Court - No. 96-35145 - Wilson -v- Marchington) have ruled that (Pg 9 of 13) "[16] The Supreme Court analyzed the North Dakota highway at issue in Strate, and concluded that "[t]he right-of-way North Dakota acquired for the State's highway renders the 6.59-mile stretch equivalent, for nonmember governance purposes, to alienated, non-Indian land." (EMPHASIS ADDED). Alternatively, as you might expect, the Tribes do not agree with these conclusions of the Court, nevertheless the decisions appear final. While these decisions conclude, the States have significant governing powers, the burden that goes along with this also suggests significant responsibilities to maintain fencing. The responsibility for fence maintenance in Montana follows the "right hand rule" where a 'landowner' standing on his property is responsible to maintain the right-half of the fence. Carrying this maintenance rule to the Supreme Court analogy of rights-of-way granted to the State to be "de-facto fee patent lands under the control of the State", the State Highway Department than MUST be responsible for maintenance of the right-half of the rights-of-way fence. It is extremely burdensome to place total responsibility for rights-of-way fence maintenance solely on the "person owning, controlling, or in possession of livestock or a person owning property for damages —" and limit this to individuals and not require the State of Montana Highway Department to share responsibility for maintenance.

Virtually all of the fences along the Rights-of-Way referred to above were constructed in excess of 40 years ago. We refer you to USDA-NRCS Conservation Plan Manual, Section 440 V - Part 515.143, amended 1 Feb. 1999 - page 515-225 to 229 where for USDA-NRCS purposes, the life span of a fence is twenty (20) years. What does the MSHD consider to be the life span of a stock fence?

RECOMMENDATION: We recommend that HB NO. 246 be further amended to include language placing a responsibility on the State of Montana Highway Department to share (50-50) for maintenance of rights-of-way fences on highways that they are responsible to maintain on behalf of the traveling public. We further recommend that HB NO. 246 be amended to include a requirement that MSHD construct or re-construct the rights-of-way fence on not less than twenty (20) year rotation, depending upon the maintenance and condition of the fence. It seems

grossly unfair to place the total burden on individual landowners and/or livestock owners for maintenance of a public right-of-way.

We are willing to work with the State Legislature, Montana State Highway Department, and any other individual or entity to resolve this issue to be benefit of all persons, including but not limited to landowners, livestock producers, and especially the traveling public, which includes all of the above.

Respectfully,

A handwritten signature in dark ink, appearing to read "J F McConnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Joseph F. McConnell, President
Fort Belknap Community Council

SENATE AGRICULTURE

EXHIBIT NO. 10DATE 2-7-01BILL NO. HB 246

Wayne & Shirlee
phone/fax
406-947-2511

Ben
phone
407-947-2511

Brillhart Ranch Co.

Registered & Commercial Hereford Cattle

P.O. Box 172
Musselshell, MT 59059

Charles
phone
406-947-2501

Irene

*Attn: Keith Bales***We need and urge your support of House Bill 246**

In the Summer of 99 we had an incident where a sub divider resident hit a calf and killed it. She then wanted our insurance company to pay a \$1700 repair bill. She was not at all concerned about who was to pay for the calf. This happened on a secondary gravel road, when she found out about that area being open range (which she did not have a clue as to what open range was) she no longer pursued the issue.

Our insurance company refused to pay the bill not only because of the open range law but also because her repair was highly inflated and out of reason and she had given two different reports on the incident, the story kept changing..

This is an example of one of many incidents that will continue and become ramped if we are not protected by the Open Range Law.

Wayne Brillhart
Shirlee Brillhart
1-16-01

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phone/fax
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Brillhart Ranch Co.

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Ben Brillhart

1-16-2001

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This is an example of one of many incidents that will continue and become ramped if we are not protected by the Open Range Law.

Shirlee Brillhart
1-16-01

SENATE COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

February 9, 2001

PAGE 7 of 10

Motion/Vote: SEN. STAPLETON moved that AMENDMENT SB024503.ADS BE ADOPTED. Motion carried unanimously.

Motion: SEN. ZOOK moved that SB 245 DO PASS AS AMENDED.

Discussion:

SEN. JERGESON wanted to note the inadequacy of the fiscal note on the bill.

Vote: Motion carried 10-1 with Jergeson voting no.

EXECUTIVE ACTION ON HB 246

Motion: SEN. PETE EKEGREN moved that HB 246 BE CONCURRED IN.

Discussion:

SEN. HALLIGAN questioned state land or liability issues that would require a 2/3 vote.

SEN. HOLDEN referred the question to John Bloomquist.

John Bloomquist, Montana Stockgrowers Association, explained the definition of person in the bill, does not include the State therefore, it would not be a requirement.

SEN. STAPLETON questioned the part of the bill which stated a livestock owner had "no duty" to keep their livestock in, although, later someone could be found liable.

John Bloomquist stated highways do not allow livestock on the rights-of-way which means a livestock owner would not be liable except in cases in which a livestock owner were grossly negligent or intentionally put their livestock on the right-of-way.

SEN. STAPLETON asked Mr. Bloomquist if he disagreed with the person at the hearing who stated their were inconsistencies in the language of the bill.

John Bloomquist answered, yes.

Vote: Motion carried unanimously.

SEN. HOLDEN noted that he would carry the bill on the floor.

EXECUTIVE ACTION ON SB 261



SENATE STANDING COMMITTEE REPORT

February 12, 2001

Page 1 of 1

Mr. President:

We, your committee on Agriculture, Livestock and Irrigation report that House Bill 246 (third reading copy - blue) be concurred in.

Signed: _____

Ric Holden

Senator Ric Holden, Chair

To be carried by Senator Ric Holden

- END -

Committee Vote:
Yes 9, No 2.

350957SC.sjo

gm

DATE 2-7-01

SENATE COMMITTEE ON Ag

BILLS BEING HEARD TODAY: HB246, SB259

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike Sjostrom	442-3740	Montana Livestock As Credit, Inc.	246	X	
Kathy Bessette	398-5381	Hill County	SB259	X	
" "	398-5381	Hill County	HB246	X	
BOB BRASTRUP	266-3872	myself	SB259	X	
" "	"	"	HB246	X	
MARK Peterson	394-2211	myself	HB246	X	
-11	"	"	SB259	X	
Doug Kaercher	265-1009	Hill County	SB259		
"	"	Hill Co	HB246		
A.R. (Tom) Hagen	265-5205	Home/Hill County	SB259	X	
John L. Musgrave	265-1787	HD 91	HB259	X	
Floydona Harrison	835-2501	self	HB246	X	
Christi Pilcher	443-2642	self	HB246	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STZ
7:00
7:00

DATE 2-7-01

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: HB 246, SB 259

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OFFER
CAROL MOSHER	⁴⁰⁶ 562-3315	Mt. Cattle Women	HB 246	X	
NANCY BURNHAM	442-4702	MT Cattlewomen	HB 246	X	
TINA FREEMAN	⁴⁰⁶ 562-3567	MT Cattlewomen	HB 246	X	
Bev. Allen	⁴⁰⁶ 562-3395	Self	HB 246	X	
Pat Conway	⁴⁰⁶ 265-5481	Hill County	HB 246	X	
"	"	"	SB 259	X	
Gov Hogener	⁴⁰⁶ 5205	Hill Co	SB 259	X	
ROB MILLS	⁴⁰⁶ 395-4514	Hill Co	SB 259	X	
"	"	"	HB 246	X	
Dean Houston	⁴⁰⁶ 316-3227	Self Co	SB 259	X	
Bill Darrin	⁴⁰⁶ 895-2501	MSGIA	HB 246	X	
Karla Johnson	⁴⁰⁶ 442-3420	Self	HB 246	X	
Bill Hiney	266-3084	MSGIA	HB 246	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-7-01

SENATE COMMITTEE ON Ag

BILLS BEING HEARD TODAY: HB 246, SB 259

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
MIKE MURPHY	235-4555	MURA	HB 246	✓	
Greg Van Housen	2-0230	State Farm Ins. Co.	HB 246	✓	
Rep Merlin Wolery			HB 259		
Rep Merlin Wolery			HB 246		
CAROL LAMBERT	422-5301	Women Small Business Farm Economics WIFE	HB 246	✓	
Riley Johnson	442-3747	NFIB	HB 246	X	
DAVE GALT	4-6201	MDT	SB 259	✓	
Al Smith	443-3911	MTWA	HB 246	✓	✓
John Bloomquist		Mt. Steinhagen	HB 246 SB 259	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-7-01

SENATE COMMITTEE ON Ag

BILLS BEING HEARD TODAY: HB246, SB259

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OFFER
BEN SEGANKUNIG	353-2805	FORE SCHWAB COMMUNITY COLLEGE	HB246		
Nancy Schlepp	442-7476	MT Farm Bureau	HB246	✓	
Roy Andes	442-5581	SELF	HB246	✓	
Buzz Doney	383-4306	SELF	HB246		✓
Darwin Doney	383-4306	SELF	HB246		✓
MARK DIEHL	227-6696	SELF	HB246	✓	
Dore Schwinden	442-9541	MT Farmers Union	HB259 HB246	✓	
Cliff Cox	227-6697	Farm Bureau	HB246	✓	
John Semple	443-7487	MT CATTLEWOMEN	HB246	✓	
Gloria Paladichuk		Richland Zone Development			
Bob Bergren	449-2823	Helena	246	✓	
JOHN J. LYNDES	368-2222	CANYON CREEK SELF	246		✓
JEFF T. LYNDES	458-6273	HELENA SELF	246		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



AN ACT CLARIFYING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON WHO OWNS PROPERTY DOES NOT HAVE A DUTY TO PREVENT LIVESTOCK FROM WANDERING ON HIGHWAYS; PROVIDING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON OWNING PROPERTY IS NOT SUBJECT TO LIABILITY FOR DAMAGES OR INJURY CAUSED BY AN ACCIDENT INVOLVING A MOTOR VEHICLE AND LIVESTOCK UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Limits on liability of livestock owner or property owner in accidents involving motor vehicles and livestock. (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property has no duty to keep livestock from wandering on highways and is not subject to liability for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock unless the owner of the livestock or property was grossly negligent or engaged in intentional misconduct.

(2) As used in this section, the following definitions apply:

- (a) "Highway" has the meaning provided in 60-1-103(19);
- (b) "Livestock" has the meaning provided in 15-1-101; and
- (c) "Person" means an individual, partnership, corporation, limited liability company, limited liability partnership, or association.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to accidents involving livestock and motor vehicles on or after [the effective date of this act].

- END -

HB 0246, originated in the House.

HB0246

I hereby certify that the within bill,

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2016.

President of the Senate

Signed this _____ day
of _____, 2016.

INTRODUCED BY K. BALES, ANDERSEN, BARRETT, BECK, BUTCHER, CLANCY, E. CLARK, ~~HB 246~~
CURTISS, DALE, DAVIES, DEVLIN, EKEGREN, ELLIS, ESP, HEDGES, R. HOLDEN, JAYNE, KASTEN,
LAIBLE, LENHART, MCCANN, NELSON, OLSON, A. PETERSON, PATTISON, PRICE, RICE, RIPLEY,
ROME, SCHRUMPF, STEINBEISSER, STORY, TASH, TESTER, B. THOMAS, TROPILA, WAITSCHIES,
HOUSE BILL NO. 246
WANZENRIED, WITT, WOLERY

AN ACT CLARIFYING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK
OR A PERSON WHO OWNS PROPERTY DOES NOT HAVE A DUTY TO PREVENT LIVESTOCK FROM WANDERING
ON HIGHWAYS; PROVIDING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK
OR A PERSON OWNING PROPERTY IS NOT SUBJECT TO LIABILITY FOR DAMAGES OR INJURY CAUSED
BY AN ACCIDENT INVOLVING A MOTOR VEHICLE AND LIVESTOCK UNLESS THE OWNER OF THE LIVESTOCK
OR PROPERTY WAS GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schruppf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 93

Noes: Eggers, Erickson, Gutsche, Harris, Hurdle, Kaufmann.

Total 6

Voted Absentee: Bookout-Reinicke, Dale, Mangan, Witt, Ayes.

Excused: None.

Total 0

HB 246 (Thirty-seventh Legislative Day - Second Reading - Senate) - Senator R. Holden moved HB 246 be concurred in. Motion carried as follows:

Yeas: Berry, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, O'Neil, Roush, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 44

Nays: Bishop, Bohlinger, Ellingson, Harrington, Pease, Ryan.

Total 6

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Glaser excused at this time.

HB 246 (Thirty-eighth Legislative Day - Third Reading - Senate) concurred in as follows:

Yeas: Berry, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Wells, Zook, Mr. President.

Total 43

Nays: Bishop, Bohlinger, Ellingson, Pease, Ryan, Waterman.

Total 6

Absent or not voting: None.

Total 0

Excused: O'Neil.

Total 1

MOTIONS

Senator Cole moved that the rules of the Senate be suspended to allow the late drafting and introduction of a bill regarding telemarketing and slamming of citizens. Motion carried as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: O'Neil.

Total 1

HB 247 (Thirty-eighth Legislative Day - Second Reading - House) - Representative Lewis moved HB 247 do pass. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Esp, Fisher, Forrester, Fuchs, Gallus, Galvin-Halcro, Haines, Hedges, Himmelberger, Holden, Jackson, Jacobson, Jayne, Jent, Kasten, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrupf, Shockley, Sliter, Somerville, Steinbeisser, Story, Thomas, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 83

Noes: Bixby, Callahan, Erickson, Facey, Fritz, Gallik, Gillan, Golie, Gutsche, Harris, Hurdle, Juneau, Kaufmann, Keane, Mangan, Smith, Tramelli.

Total 17

Excused: None.

Total 0

HB 247 (Thirty-ninth Legislative Day - Third Reading - House) passed as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Esp, Fisher, Forrester, Fuchs, Gallus, Galvin-Halcro, Gillan, Haines, Harris, Hedges, Himmelberger, Holden, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrupf, Shockley, Sliter, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 88

Noes: Callahan, Erickson, Facey, Fritz, Gallik, Golie, Gutsche, Hurdle, Kaufmann, Keane, Mangan, Smith.

Total 12

Voted Absentee: R. Brown, Aye.

Excused: None.

Total 0

HB 247 (Sixty-first Legislative Day - Second Reading - Senate) - Senator Cole moved HB 247 be concurred in. Motion carried as follows:

Yeas: Berry, Bohlinger, Butcher, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekengren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Tash, Taylor, Tester, Thomas, Toole, Wells, Zook, Mr. President.

Total 41

Nays: Bishop, Cobb, Jergeson, Miller.

Total 4

Absent or not voting: Elliott.

Total 1

Excused: Harrington, Holden, Stonington, Waterman.

Total 4